TEXAS REGISTER

Volume 35 Number 39 *September 24, 2010* *Pages 8545 – 8822*

Cristina Medrano

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.state.tx.us

IN THIS ISSUE

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Proclamation 41-3242

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that Tropical Storm Hermine has caused a disaster in the counties of Bastrop, Bee, Bell, Bexar, Blanco, Burnet, Caldwell, Cameron, Collin, Comal, Coryell, Dallas, DeWitt, Ellis, Fannin, Fayette, Gonzales, Grayson, Guadalupe, Hays, Hill, Hunt, Jim Wells, Johnson, Karnes, Kaufman, Kendall, Kenedy, Kleberg, Lavaca, Live Oak, McLennan, Medina, Navarro, Nueces, Rockwall, Tarrant, Travis, Willacy and Williamson beginning September 6, 2010, and continuing.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the counties listed above based on the existence of such a threat, and direct that all necessary measures, both public and private, as authorized under Section 418.017 of the code be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 9th day of September, 2010.

Rick Perry, Governor

Attested by: Hope Andrade, Secretary of State

TRD-201005260

♦ ♦ ♦

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinion

RQ-0915-GA

Requestor:

The Honorable Joe Shannon, Jr.

Tarrant County Criminal District Attorney

401 West Belknap

Fort Worth, Texas 76196-0201

Re: Procedures for providing emergency care of an individual under section 773.008, Health & Safety Code (RQ-0915-GA)

Briefs requested by October 4, 2010

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201005244
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: September 8, 2010

♦ ♦ ♦

Opinion

Opinion No. GA-0796

The Honorable Allan B. Ritter

Chair, Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the conflict of interest provisions of chapter 171, Local Government Code, required two board members of the Uvalde County Underground Water Conservation District to disclose their respective interests and abstain from voting on a District rule (RQ-0853-GA)

S U M M A R Y

Chapter 171 of the Local Government Code generally governs a local public official's pecuniary conflicts of interest. Section 171.004 requires a local public official to file an affidavit disclosing the official's interest in a business entity or real property and abstain from participating in a vote or decision involving that entity or real property when the vote or decision will have a special economic effect on the business entity or the value of the real property.

In March 2009, the board of directors (the "Board") of the Uvalde County Underground Water Conservation District (the "District") voted to approve a District rule permitting withdrawal of groundwater for agricultural use without certain limitations previously proposed. Based on the facts presented, a court *could* find that the March 2009 action had a special economic effect on an applicant for a water permit in which a Board member has a substantial interest and on the value of real property owned by another Board member, which was reasonably foreseeable. Given the inherently factual nature of the inquiry and absence of judicial precedent, this office cannot conclude that a court *would* find that the March 2009 action had a special economic effect, or that it was reasonably foreseeable that the action would have such an effect as to require the two Board members to file affidavits disclosing their interests and abstain from participating in the March 2009 vote.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201005369
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: September 15, 2010

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.112, concerning Attendant Compensation Rate Enhancement.

Background and Justification

Pursuant to §531.0973, Deaf-Blind Multiple Disabilities Waiver Program: Career Ladder for Interveners, as amended by S.B. 63, 81st Legislature, Regular Session, 2009, the Department of Aging and Disability Services (DADS) implemented a career ladder for persons who provide intervener services in the Deaf-Blind with Multiple Disabilities (DBMD) program, effective June 1, 2010. Chapter 531 requires the career ladder to include four levels of interveners (Intervener, Intervener I, Intervener II, and Intervener III) with increasing experience and education requirements and the compensation an intervener receives under the DBMD program be based on and commensurate with the intervener's career ladder classification. Prior to S.B. 63, there was only one level of intervener with one payment rate under the DBMD program.

Interveners I, II, and III are required to meet experiential and educational requirements significantly greater than those of a typical community care attendant and payment rates for these staff types are significantly greater than those for an Intervener and other community care attendants. Given these characteristics, the inclusion of Interveners I, II and III in the attendant compensation rate enhancement would not meet the intent of the enhancement program as described in its enabling legislation, the 2000-01 General Appropriations Act (Article II, Department of Human Services, Rider 37, H.B.1, 76th Legislature, Regular Session, 1999). This enabling legislation required the legacy Department of Human Services to adopt rules that incentivize increased wages and benefits for community care attendants for the purpose of improving the quality of care for community care clients.

In response to the implementation of this career ladder, HHSC, under its authority and responsibility to administer and implement rates, is amending §355.112 to exclude Interveners I, II, and III from the definition of an attendant. The end result of this amendment will be that DBMD providers will not be eligible to receive attendant compensation rate enhancements to the Intervener I, II or III rates. Providers will still be able to receive attendant compensation rate enhancements to the Intervener rate. HHSC is also amending Title 1, Part 15, Chapter 355, Subchapter E, §355.513, Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program, to implement a reimbursement methodology for Interveners I, II and III and to exclude these job classifications from the attendant compensation rate enhancement. The proposed amendment to §355.513 also appears in this issue of the *Texas Register.*

Section-by-Section Summary

HHSC proposes to make the following amendments to §355.112:

Revise subsection (b)(2) to add Interveners I, II, and III to the list of staff types that are not considered to be attendants for purposes of the attendant compensation rate enhancement.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each of the first five years the amendment is in effect, the expected public benefit is that participation in the attendant compensation rate enhancement will be limited to community care attendants and DBMD providers will have clear guidance as to which interveners are eligible for attendant compensation rate enhancements.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by facsimile at (512) 491-1998, by e-mail to pam.mcdonald@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment affects Texas Government Code Chapter 531and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.112. Attendant Compensation Rate Enhancement.

(a) (No change.)

(b) Definition of attendant. An attendant is the unlicensed caregiver providing direct assistance to the clients with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

(1) In the case of the ICF/MR, DAHS, RC, and CBA AL/RC programs and HCS Supervised Living (SL) and Residential Support Services (RSS) services, the attendant may perform some nonattendant functions. In such cases, the attendant must perform attendant functions at least 80% of his or her total time worked. Staff in these settings not providing attendant services at least 80% of their total time worked are not considered attendants. Time studies must be performed in accordance with §355.105(b)(2)(B)(i) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) for staff in the ICF/MR, DAHS, RC, and CBA AL/RC programs and HCS SL/RSS services that are not full-time attendants but perform attendant functions to determine if a staff member meets this 80% requirement. Failure to perform the time studies for these staff will result in the staff not being considered to be attendants.

(2) Attendants do not include the director, administrator, assistant director, assistant administrator, clerical and secretarial staff, professional staff, other administrative staff, licensed staff, attendant supervisors, cooks and kitchen staff, maintenance and groundskeeping staff, activity director, DBMD Interveners I, II or III, Qualified Mental Retardation Professionals (QMRPs), assistant QMRPs, direct care worker supervisors, direct care trainer supervisors, job coach supervisors, foster care providers, and laundry and housekeeping staff. In the case of HCS Supported Home Living, TxHmL Community Supports, PHC, CLASS, CBA--HCSS, and DBMD, staff other than attendants may deliver attendant services and be considered an attendant if they must perform attendant services that cannot be delivered by another attendant to prevent a break in service.

(3) - (5) (No change.)

(c) - (hh) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 8, 2010.

TRD-201005227
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.513

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.513, concerning Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program.

Background and Justification

Pursuant to §531.0973, relating to Deaf-Blind Multiple Disabilities Waiver Program: Career Ladder for Interveners, as amended by S.B. 63, 81st Legislature, Regular Session, 2009, the Department of Aging and Disability Services (DADS) implemented a career ladder for persons who provide intervener services in the Deaf-Blind with Multiple Disabilities (DBMD) program, effective June 1, 2010. Chapter 531 requires the career ladder to include four levels of interveners (Intervener, Intervener I, Intervener II, and Intervener III) with increasing experience and education requirements and the compensation an intervener receives under the DBMD program be based on and commensurate with the intervener's career ladder classification. Prior to S.B. 63, there was only one level of intervener with one payment rate under the DBMD program.

In response to the implementation of this career ladder, HHSC, under its authority and responsibility to administer and implement rates, is amending §355.513 to implement a reimbursement methodology for Interveners I, II and III and to exclude these job classifications from the attendant compensation rate enhancement. HHSC is also amending Title 1, Part 15, Chapter 355, Subchapter A, §355.112, Attendant Compensation Rate Enhancement, to exclude Interveners I, II, and III from the definition of an attendant. The proposed amendment to §355.112 also appears in this issue of the *Texas Register.*

Interveners I, II, and III are required to meet experiential and educational requirements significantly greater than those of a typical community care attendant and payment rates for these staff types are significantly greater than those for an Intervener and other community care attendants. Given these characteristics, the inclusion of Interveners I, II and III in the attendant compensation rate enhancement would not meet the intent of the enhancement program to incentivize increased wages and benefits for community care attendants.

The end result of this amendment will be that a reimbursement methodology will be put in place for Interveners I, II and III and DBMD providers will not be eligible to receive attendant compensation rate enhancements to the Intervener I, II or III rates. Providers will still be able to receive attendant compensation rate enhancements to the Intervener rate.

Section-by-Section Summary

HHSC proposes to make the following amendments to §355.513:

Revise subsection (c)(7) to indicate that it does not apply to Interveners I, II or III.

Add subsection (c)(8) which establishes that the rates for Interveners I, II, and III are developed based on rates determined for other programs that provide similar services and that if payment rates are not available from other programs that provide similar services, HHSC will model rates based a pro forma analysis. As well, this subsection indicates that DBMD providers are not eligible to receive direct care add-ons to the Intervener I, II or III rates.

Re-designate subsection (c)(8) as subsection (c)(9).

Re-designate subsection (c)(9) as subsection (c)(10).

Re-designate subsection (c)(10) as subsection (c)(11).

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. While the amended rule will result in rates for Intervener I, II and III that are higher than the current Intervener rates, there will not be a fiscal impact to the state because the higher costs will be absorbed through management of the number of individuals served under the DBMD waiver. The amended rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each of the first five years the amendment is in effect, the expected public benefit is that the rules will describe the reimbursement methodology used to develop rates for Interveners I, II, and III and DBMD providers will have clear guidance as to which interveners are eligible for attendant compensation rate enhancements.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by facsimile at (512) 491-1998, by e-mail to pam.mcdonald@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment affects Texas Government Code Chapter 531and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.513. Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program.

(a) - (b) (No change.)

(c) Waiver rate determination methodology. If HHSC deems it appropriate to require contracted providers to submit a cost report, recommended reimbursements for waiver services will be determined on a fee-for-service basis in the following manner for each of the services provided:

(1) - (6) (No change.)

(7) For habilitation day, residential habilitation (less than 24-hour and 24-hour residential habilitation), assisted living (24-hour supervision and less than 24-hour supervision), and intervener (excluding Interveners I, II and III) services, two cost areas are created:

(A) - (D) (No change.)

(8) For Interveners I, II and III, payment rates are developed based on rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma approach in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). Interveners I, II and III are not considered attendants for purposes of the Attendant Compensation Rate Enhancement described in §355.112 of this title and providers are not eligible to receive direct care add-ons to the Intervenor I, II or III rates.

(9) [~~(8)~~] The lifetime ceiling per client for minor home modifications is determined from sources other than cost reports for this program. The annual ceiling per client for adaptive aids is determined from sources other than cost reports for this program.

(10) [~~(9)~~] Pre-enrollment assessment services are based on the hourly case management reimbursement.

(11) [~~(10)~~] HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) (No change.)

(e) Reporting of cost.

(1) Cost-reporting guidelines. If HHSC requires a cost report for any waiver service in this program, providers must follow the cost-reporting guidelines as specified in §355.105 of this title [~~(relating to General Reporting and Documentation Requirements, Methods, and Procedures)~~].

(2) - (4) (No change.)

(f) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 8, 2010.

TRD-201005228
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)

1 TAC §355.8441

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8441, concerning Reimbursement Methodologies for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services.

Background and Justification

HHSC proposes to amend the reimbursement rule related to EPSDT services. EPSDT services, also known in Texas as Texas Health Steps (THSteps) and the THSteps Comprehensive Care Program (CCP), are delivered only to Medicaid clients under age 21. The proposed rule amendment replaces the terms "freestanding psychiatric hospitals and facilities" and "freestanding rehabilitation hospitals" with the term "freestanding psychiatric facilities." It also replaces the terms "expendable medical supplies" and "durable medical equipment" with the term "durable medical equipment, prosthetics, orthotics and supplies (DMEPOS)." In addition, the proposed amendment updates the references to the reimbursement rules related to freestanding psychiatric facilities and services, DMEPOS, and home health agencies. These proposed amendments are the result of recent updates by HHSC to the related rules. The words "Medical Phase" have been deleted from the Division title. Finally, the proposed amendment includes changes made for clarity and consistency.

Section-by-Section Summary

Paragraph (1) is amended by replacing the reference to §355.8063 with §355.8060. The amendment proposes to replace "freestanding psychiatric hospitals and facilities" with "freestanding psychiatric facilities."

Paragraph (2) is deleted as it is absorbed into paragraph (3) and the remaining paragraphs are re-numbered. Re-numbered paragraph (2) is amended by replacing "durable medical equipment" with "durable medical equipment, prosthetics, orthotics and supplies (DMEPOS)." It is also amended by replacing §355.8021(c) with §355.8021(b).

Re-numbered paragraphs (3)(B), (4)(B), (5)(B), and (6)(B) are amended by replacing the description of the reimbursement methodology for home health agencies (HHAs) with the reference to §355.8021(a), which describes the current reimbursement methodology for HHAs.

Re-numbered paragraphs (4)(D), (5)(D), and (6)(D) are amended by replacing the reference to §355.8063 with the reference to §355.8060.

Additional changes are proposed throughout the rule to update terms, remove obsolete language, and clarify language.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule amendments are in effect there will not be a fiscal impact to state government. The proposed rule amendments will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will not be an effect on small businesses or micro-businesses to comply with the proposed rule amendments, as they will not be required to alter their business practices as a result of the amendments.

There are no anticipated economic costs to persons who are required to comply with the proposed rule amendments. There is no anticipated negative impact on local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule amendments are in effect, the public will benefit from adoption of the amendments. The anticipated public benefit will be updated rule references and language related to freestanding psychiatric facilities and DMEPOS.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Megan Blood, Rate Analyst, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to megan.blood@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8441. Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPDST) Services.

The following are reimbursement methodologies for services provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, delivered only to Medicaid clients under age 21, also known as [~~the~~] Texas Health Steps (THSteps) and the THSteps Comprehensive Care Program (CCP). Reimbursement methodologies for services provided to all Medicaid clients, including clients under age 21, are located elsewhere in this chapter.

(1) Counseling [~~THSteps counseling~~] and psychotherapy services are reimbursed to freestanding psychiatric [~~hospitals and~~] facilities in accordance with §355.8060 [~~§355.8063~~] of this subchapter [~~title~~] (relating to Reimbursement Methodology for Freestanding Psychiatric Facilities). [~~Inpatient Hospital Services). The reimbursement methodologies for counseling and psychotherapy services provided to all Medicaid clients are located elsewhere in this chapter.~~]

[~~(2) Expendable medical supplies, including nutritional products, are reimbursed in the same manner as expendable medical supplies under home health services at §355.8021(b) of this title (relating to Reimbursement Methodology for Home Health Services).~~]

(2) [~~(3)~~] Durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) are [~~is~~] reimbursed in the same manner as DMEPOS [~~durable medical equipment~~] under home health services at §355.8021(b) [~~(c)~~] of this subchapter (relating to Reimbursement Methodology for Home Health Services and Durable Medical Equipment, Prosthetics, Orthotics and Supplies) [~~title~~].

(3) [~~(4)~~] Nursing [~~Private duty nursing~~] services, including, but not limited to, private duty nursing, registered nurse (RN) services, licensed vocational nurse/licensed practical nurse (LVN/LPN) services, skilled nursing services delegated to qualified aides by RNs in accordance with the licensure standards promulgated by the Texas Board of Nursing [~~Nurse Examiners (BNE)~~], and nursing assessment services, are reimbursed [~~based on~~] the lesser of the provider's billed charges or fees established by the Texas Health and Human Services Commission (HHSC) for each of the applicable provider types as follows:

(A) Independently enrolled RNs and LVNs/LPNs, under §355.8085 of this subchapter [~~title~~] (relating to Texas Medicaid Reimbursement Methodology (TMRM) for Physicians and Certain Other Practitioners); and

(B) Home health agencies (HHAs), under §355.8021(a) of this subchapter. [~~Fees for these services will be reviewed every two years and will be adjusted, within available funding, based on historical charges, a review of Medicaid fees paid by other states, a survey of costs for a representative sample of providers, an analysis of cost reports provided by HHAs for similar nursing services, a review of Medicaid fees for similar services, modeling using an analysis of other data available to HHSC, or a combination thereof.~~]

(4) [~~(5)~~] Physical therapy [~~(PT)~~] services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, under §355.8081 of this subchapter [~~title~~] (relating to Payments for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, [~~and~~] Psychologists' Services, Licensed Psychological Associates' Services, Maternity Clinic Services, and Tuberculosis Clinic Services);

(B) HHAs, under §355.8021(a) of this subchapter[~~. Fees for these services are statewide visit rates determined appropriate by HHSC. The fees are based on a review of Medicaid and Medicare fees for similar services, an analysis of cost reports provided by HHAs, modeling using an analysis of other data available to HHSC such as relevant cost or fee surveys, or a combination thereof~~];

(C) Medicare-certified outpatient facilities known as comprehensive outpatient rehabilitation facilities (CORFs) and outpatient rehabilitation facilities (ORFs), under §355.8085 of this subchapter [~~title~~];

(D) freestanding psychiatric facilities [~~rehabilitation hospitals~~], under §355.8060 [~~§355.8063~~] of this subchapter [~~title~~]; and

(E) outpatient hospitals, under §355.8061 of this subchapter [~~title~~] (relating to Payment for Hospital Services).

(5) [~~(6)~~] Occupational therapy [~~(OT)~~] services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, under §355.8081 of this subchapter [title];

(B) HHAs, under §355.8021(a) of this subchapter[. Fees for these services are statewide visit rates determined appropriate by HHSC. The fees are based on a review of Medicaid and Medicare fees for similar services, an analysis of cost reports provided by HHAs, modeling using an analysis of other data available to HHSC such as relevant cost or fee surveys, or a combination thereof];

(C) [Medicare-certified outpatient facilities known as comprehensive outpatient rehabilitation facilities (]CORFs[)] and [outpatient rehabilitation facilities (]ORFs[)], under §355.8085 of this subchapter [title];

(D) freestanding psychiatric facilities [rehabilitation hospitals], under §355.8060 [§355.8063] of this subchapter [title]; and

(E) outpatient hospitals, under §355.8061 of this subchapter [title].

(6) [(7)] Speech-language pathology [(SLP)] services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, under §355.8081 of this subchapter [title];

(B) HHAs, under §355.8021(a) of this subchapter[. Fees for these services are statewide visit rates determined appropriate by HHSC. The fees are based on a review of Medicaid and Medicare fees for similar services, an analysis of cost reports provided by HHAs, modeling using an analysis of other data available to HHSC such as relevant cost or fee surveys, or a combination thereof];

(C) [Medicare-certified outpatient facilities known as comprehensive outpatient rehabilitation facilities (]CORFs[)] and [outpatient rehabilitation facilities (]ORFs[)], under §355.8085 of this subchapter [title];

(D) freestanding psychiatric facilities [rehabilitation hospitals], under §355.8060 [§355.8063] of this subchapter [title]; and

(E) outpatient hospitals, under §355.8061 of this subchapter [title].

(7) [(8)] Nutritional services provided by licensed dietitians are reimbursed [according to] the lesser of the provider's billed charges or fees determined by HHSC in accordance with §355.8085 of this subchapter [title].

(8) [(9)] Providers are reimbursed for the administration of immunizations [according to] the lesser of the provider's billed charges or fees determined by HHSC in accordance with §355.8085 of this subchapter [title].

(9) [(10)] Vaccines not covered elsewhere are reimbursed [according to] the lesser of the provider's billed charges or the actual cost of the vaccine.

(10) [(11)] Dental services provided by independently enrolled dentists are reimbursed in accordance with §355.8081 of this subchapter [title]. The fees are calculated as access-based fees under §355.8085 of this subchapter [title] and are based on a percentage of the billed charges (i.e., the usual-and-customary amount providers charge non-Medicaid clients for similar services) reported on Medicaid dental claims for each dental service, excluding billed charges that are less than or equal to the published Medicaid fee for that service. The fees are reviewed at least every two years. Dental services provided by federally qualified health centers (FQHCs) are reimbursed in accordance with §355.8261 of this subchapter [title] (relating to Federally Qualified Health Center Services Reimbursement).

(11) [(12)] Personal care services (PCS) are reimbursed in accordance with the following Medicaid reimbursement methodologies for the applicable provider type:

(A) School districts delivering PCS under School Health and Related Services (SHARS) are reimbursed in accordance with §355.8443 of this division [title] (relating to Reimbursement Methodology for School Health and Related Services (SHARS)); and

(B) Providers other than school districts delivering PCS are reimbursed as follows:

(i) PCS and PCS delivered in conjunction with delegated nursing services are reimbursed fees determined by HHSC or its designee. The fees are determined using at least one of the following methods: a review of rates paid to providers delivering similar services; modeling using an analysis of other data available to HHSC; or a combination thereof, as determined appropriate by HHSC.

(ii) PCS delivered through the Consumer Directed Services [(CDS)] payment option are reimbursed in accordance with §355.114 of this chapter [title] (relating [related] to Consumer Directed Services Payment Option).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 7, 2010.

TRD-201005200
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 424-6900

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.1

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Subchapter A, §1.1, concerning Definitions for Housing Program Activities. The new section is proposed in order to create a centralized rule with definitions that could be applicable to other departmental multifamily programs.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the proposed new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as proposed. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to

comply with the section as proposed. The proposed section will not impact local employment.

Mr. Gerber has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced compliance with formalized policy, all contractual and statutory requirements.

The public comment period will be held between September 24, 2010 to October 23, 2010 to receive input on this section. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-1672. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM OCTOBER 23, 2010.

The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed new section affects no other code, article or statute.

§1.1. Definitions for Housing Program Activities.

The following definitions apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, and other Department programs as defined in their Rules. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Texas Government Code, Chapter 2306, §42 of the Internal Revenue Code, this section, and repeated in the Tax Credit (Procedures) Manual.

(1) Adaptive Reuse--The change-in-use of an existing non-residential building (e.g., school, warehouse, office, hospital, etc.), into a residential building. Adaptive reuse does not include the demolition of the external walls of the existing building. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site.

(2) Administrative Deficiencies--Information requested by the Department that is required to clarify or correct inconsistencies in an Application that in the Department's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with any other Person or Principal. All entities that share a Principal are Affiliates.

(4) Applicant--Any Person or Affiliate of a Person who files a Pre-Application or an Application with the Department requesting a Housing Credit Allocation. (§2306.6702)

(5) Application--A request for funds, housing tax credits or other financial assistance submitted to the Department in a form prescribed by the Department, including any exhibits or other supporting material. (§2306.6702)

(6) Appropriate Local Official--With respect to a municipality or area within an extraterritorial jurisdiction (ETJ), means either the mayor, the city manager, or another official of the body operating under valid, written confirmation of authority signed by the mayor or city manager. With respect to an area not within the municipality or its ETJ, Appropriate Local Official means a county commissioner or another official authorized by the county commissioner to act.

(7) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

(8) Board--The Governing Board of the Department.

(9) Colonia--A geographic Area that is located in a county some part of which is within 150 miles of the international border of this state, that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

(A) has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed Area under §17.921, Texas Water Code; or

(B) has the physical and economic characteristics of a colonia, as determined by the Department.

(10) Commitment--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance will be made available.

(11) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners but not investor limited partners. Controlling entities of a limited liability company include the managing members, and any members with 10% or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership. Multiple Persons may be deemed to simultaneously have control.

(12) Department--The Texas Department of Housing and Community Affairs or any successor agency.

(13) Developer--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

(14) Development Consultant or Consultant--Any Person (with or without ownership interest in the Development) who provides professional services relating to the filing of an Application, Carryover Allocation Document, and/or cost certification documents.

(15) Development Owner--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department. (§2306.6702)

(16) Development Team--All Persons or Affiliates thereof that play a role in the Development, construction, Rehabilitation, management and/or continuing operation of the subject Property, which will include any Development Consultant and Guarantor.

(17) Efficiency Unit--A Unit without a separately enclosed bedroom.

(18) Executive Award and Review Advisory Committee ("The Committee")--The Department committee created under Texas Government Code, §2306.112.

(19) General Contractor--One who contracts for the construction or Rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. This party may also be referred to as the "contractor."

(20) General Partner--That partner, or collective of partners, identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.

(21) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(22) Governmental Entity--Includes federal or state agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(23) Governmental Instrumentality--A legal entity which is created by a Unit of General Local Government under statutory authority and which instrumentality is authorized to transact business for the Unit of General Local Government.

(24) Grant--Financial assistance that is awarded in the form of money to a housing sponsor for a specific purpose and that is not required to be repaid. A Grant includes a forgivable loan.

(25) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(26) Historically Underutilized Businesses (HUB)--A business that is a Corporation, Sole Proprietorship, Partnership, or Joint Venture in which at least 51% of the business is owned, operated, and actively controlled and managed by a minority or woman in which the owner(s):

(A) have a proportionate interest and demonstrate active participation in the control, operation, and management of the entities' affairs; and

(B) are economically disadvantaged because of their identification as members of the following groups:

(i) Black Americans--Includes persons having origins in any of the Black racial groups of Africa;

(ii) Hispanic Americans--Includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) American Women--Includes all women of any ethnicity except those specified in clauses (i), (ii), (iv), and (v) of this subparagraph;

(iv) Asian Pacific Americans--Includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, the Northern Marianas, and Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan or Nepal; and

(v) Native Americans--Includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; and

(C) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons described by subparagraphs (A) and (B) of this paragraph; or

(D) a sole proprietorship created for the purpose of making a profit that is 100% owned, operated, and controlled by a person described by subparagraphs (A) and (B) of this paragraph; or

(E) a partnership formed for the purpose of making a profit in which 51% of the assets and interest in the partnership is owned by one or more persons who are described by subparagraphs (A) and (B) of this paragraph; or

(F) a joint venture in which each entity in the joint venture is a HUB under this subdivision; or

(G) a supplier contract between a HUB under this subdivision and a prime contractor/vendor under which the HUB is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies;

(H) a business other than described in subparagraphs (D), (F), and (G) of this paragraph, which is formed for the purpose of making a profit and is otherwise a legally recognized business organization under the laws of the State of Texas, provided that at least 51% of the assets and 51% of any classes of stock and equitable securities are owned by one or more persons described by subparagraphs (A) and (B) of this paragraph.

(27) HUD--The United States Department of Housing and Urban Development, or its successor.

(28) IRS--The Internal Revenue Service, or its successor.

(29) Land Use Restriction Agreement or LURA--An agreement between the Department and the Development Owner which is a binding covenant upon the Development Owner's successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds.

(30) Unit of General Local Government--A city, town, county, village, tribal reservation or other general purpose political subdivision of the State.

(31) Low Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department.

(32) Managing General Partner--A general partner of a partnership that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also be used for a Managing Member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(33) Material Deficiency--Any individual Application deficiency or group of Administrative Deficiencies which, if addressed, would require, in the Department's reasonable judgment, a substantial reassessment or re-evaluation of the Application or which, are so numerous and pervasive that they indicate a failure by the Applicant to submit a substantively complete and accurate Application.

(34) Material Noncompliance--Defined as:

(A) a Housing Tax Credit (HTC) Development located within the state of Texas will be classified by the Department as being in Material Noncompliance status if the noncompliance score for such Development is equal to or exceeds a threshold of 30 points in accordance with the Material Noncompliance provisions, methodology, and point system in §60.121 of this title;

(B) non-HTC Developments monitored by the Department with 1 - 50 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 30 points. Non-HTC Developments monitored by the Department with 51 - 200 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 50 points. Non-HTC Developments monitored by the Department with 201 or more Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 80 points;

(C) for all programs, a Development will be in Material Noncompliance if the noncompliance is stated in §60.121 of this title, to be Material Noncompliance.

(35) Minority Owned Business--A business entity at least 51% of which is owned by members of a minority group or, in the case of a corporation, at least 51% of the shares of which are owned by members of a minority group, and that is managed and Controlled by members of a minority group in its daily operations. Minority group includes women, African Americans, American Indians, Asian Americans, and Mexican Americans and other Americans of Hispanic origin. (§2306.6734)

(36) Net Rentable Area (NRA)--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(37) New Construction--Any construction of a Development or a portion of a Development that does not meet the definition of Rehabilitation.

(38) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(39) Persons with Disabilities--With respect to an individual:

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(40) Principal--The term Principal is defined as Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) corporations, Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a 10% or more interest in the corporation; and

(C) limited liability companies, Principals include all managing members, members having a 10% or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(41) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(42) Qualified Allocation Plan--A plan adopted by the board under this subchapter that:

(A) provides the threshold, scoring, and underwriting criteria based on housing priorities of the department that are appropriate to local conditions;

(B) consistent with §2306.6710(e) of the Texas Government Code, gives preference in housing tax credit allocations to developments that, as compared to the other developments:

(i) when practicable and feasible based on documented, committed, and available third party funding sources, serve the lowest income tenants per housing tax credit; and

(ii) produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low income housing tax credit program; and

(C) provides a procedure for the Department, the Department's agent, or another private contractor of the Department to use in monitoring compliance with the Qualified Allocation Plan and this subchapter.

(43) Qualified Elderly Development--A Development which meets the requirements of the federal Fair Housing Act, and

(A) provided under any state or federal program that the HUD Secretary determines is specifically designed and operated to assist elderly persons (as defined in the state or federal program); or

(B) is intended for, and solely occupied by, individuals sixty-two (62) years of age or older; or

(C) is intended and operated for occupancy by at least one individual fifty-five (55) years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one individual who is fifty-five (55) years of age or older; and where the Development Owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for individuals fifty-five (55) years of age or older. (42 U.S.C. §3607(b))

(44) Reconstruction--Includes the demolition of one or more residential buildings in an Existing Residential Development and the re-construction of an equal number of Units on the Development Site.

(45) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the reconstruction of a Development on the Development Site, but does not include Adaptive Reuse (§2306.004(26-a)). More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural

components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential developments.

(46) Related Party--As defined, (§2306.6702)

(A) the following individuals or entities:

(i) the brothers, sisters, spouse, ancestors, and descendants of a person within the third degree of consanguinity, as determined by Chapter 573 of the Texas Government Code;

(ii) a person and a corporation, if the person owns more than 50% of the outstanding stock of the corporation;

(iii) two or more corporations that are connected through stock ownership with a common parent possessing more than 50% of:

(I) the total combined voting power of all classes of stock of each of the corporations that can vote;

(II) the total value of shares of all classes of stock of each of the corporations; or

(III) the total value of shares of all classes of stock of at least one of the corporations, excluding, in computing that voting power or value, stock owned directly by the other corporation;

(iv) a grantor and fiduciary of any trust;

(v) a fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(vi) a fiduciary of a trust and a beneficiary of the trust;

(vii) a fiduciary of a trust and a corporation if more than 50% of the outstanding stock of the corporation is owned by or for:

(I) the trust; or

(II) a person who is a grantor of the trust;

(viii) a person or organization and an organization that is tax-exempt under §501(a) of the Code, and that is controlled by that person or the person's family members or by that organization;

(ix) a corporation and a partnership or joint venture if the same persons own more than:

(I) fifty percent of the outstanding stock of the corporation; and

(II) fifty percent of the capital interest or the profits' interest in the partnership or joint venture;

(x) an S corporation and another S corporation if the same persons own more than 50% of the outstanding stock of each corporation;

(xi) an S corporation and a C corporation if the same persons own more than 50% of the outstanding stock of each corporation;

(xii) a partnership and a person or organization owning more than 50% of the capital interest or the profits' interest in that partnership; or

(xiii) two partnerships, if the same person or organization owns more than 50% of the capital interests or profits' interests.

(B) Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code.

(47) Rural Area--An area that is located:

(A) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

(C) in an area that is eligible for funding by Texas Rural Development Office of the United States Department of Agriculture (TRDO-USDA), other than an area that is located in a municipality with a population of more than 50,000. (§2306.004)

(48) Selection Criteria--Criteria used to determine funding priorities of the State under the specific housing program as defined in the rules or funding notices of that program.

(49) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may be rented on a month-to-month basis.

(50) Site Control--Ownership or a current contract that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to require conveyance to the Applicant.

(51) Texas Department of Rural Affairs (TDRA)--As established by Chapter 487 of the Texas Government Code.

(52) Third Party--A Third Party is a Person who is not:

(A) an Applicant, General Partner, Developer, or General Contractor; or

(B) an Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor; or

(C) receiving any portion of the fees from the Development.

(53) Total Housing Development Cost--The sum total of the Acquisition Cost, Hard Costs, Soft Costs, Developer Fee and Contractor Fee incurred or to be incurred by the Development Owner in the acquisition, construction, rehabilitation and financing of the Development.

(54) TRDO-USDA--Texas Rural Development Office (TRDO) of the U.S. Department of Agriculture (USDA) serving the State of Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005270
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER B. UNDERWRITING, MARKET ANALYSIS, APPRAISAL, ENVIRONMENTAL SITE ASSESSMENT, PROPERTY CONDITION ASSESSMENT, AND RESERVE FOR REPLACEMENT RULES AND GUIDELINES

10 TAC §§1.31 - 1.37

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Subchapter B, §§1.31 - 1.37, concerning the Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines. The sections are proposed to be repealed in order to consolidate and simplify the existing rules for all Real Estate Analysis.

Michael Gerber, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Gerber has also determined that for each year of the first five-years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. The proposed repeal will not impact local employment.

The public comment period will be held between September 24, 2010 to October 23, 2010 to receive input on this repeal and public hearings will be held. More information on the public hearings can be found at http://www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469-9606. ALL COMMENTS MUST BE RECEIVED BY OCTOBER 23, 2010.

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by this proposed repeal.

§1.31. General Provisions.

§1.32. Underwriting Rules and Guidelines.

§1.33. Market Analysis Rules and Guidelines.

§1.34. Appraisal Rules and Guidelines.

§1.35. Environmental Site Assessment Rules and Guidelines.

§1.36. Property Condition Assessment Guidelines.

§1.37. Reserve for Replacement Rules and Guidelines.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005281
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

10 TAC §§1.31 - 1.37

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Subchapter B, §§1.31 - 1.37, concerning the Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines. These new rules and guidelines are proposed in order to address guidelines for underwriting, market analysis, appraisal, environmental site assessment, and property condition assessment performed for requests submitted to the Department for review and the establishment of reserve for replacement and subsequent monitoring for developments funded through the Department.

Michael Gerber, Executive Director, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections as proposed.

Mr. Gerber has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be the more efficient organization and use of Department resources as a result of providing separate processes for the disposition of Department assets and the assessment and collection of administrative penalties. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed. The proposed new sections will not impact local employment.

The public comment period will be held between September 24, 2010 to October 23, 2010 to receive input on these proposed new sections and public hearings will be held. More information on the public hearings can be found at http.//www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address. tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469-9606. ALL COMMENTS MUST BE RECEIVED BY OCTOBER 23, 2010.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by these proposed new sections.

§1.31. General Provisions.

(a) Purpose. The rules in this subchapter apply to the underwriting, market analysis, appraisal, environmental site assessment, property condition assessment, and reserve for replacement standards employed by the Texas Department of Housing and Community Affairs (the "Department" or "TDHCA"). This chapter provides rules for the underwriting review of an affordable housing development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of the Department's portfolio. In addition, this chapter guides the underwriting staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), Executive Director, and TDHCA Governing Board (the "Board") to help ensure procedural consistency in the determination of Development feasibility (§2306.0661(f) and §2306.6710(d), Texas Government Code). Due to the unique characteristics of each development the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

(b) Definitions. Terms used in this subchapter that are also defined in Chapter 49 of this title (relating to the 2011 Department's Housing Tax Credit Program Qualified Allocation Plan and Rules, known as the "QAP") have the same meaning as in the QAP. Those terms that are not defined in the QAP or which may have another meaning when used in this subchapter, shall have the meanings set forth in §1.32(b) of this subchapter (relating to Underwriting Rules and Guidelines).

(1) Affordable Housing--Housing that has been funded through one or more of the Department's programs or other local, state or federal programs or has at least one unit that is restricted in the rent that can be charged either by a Land Use Restriction Agreement or other form of Deed Restriction.

(2) Bank Trustee--A bank authorized to do business in this state, with the power to act as trustee.

(3) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(4) Cash Flow--The funds available from operations after all expenses and debt service required to be paid has been considered.

(5) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the application information submitted by the Applicant.

(6) Comparable Unit--A Unit, when compared to the subject Unit, similar in overall condition, location, unit amenities, utility structure, and common amenities; and

(A) for purposes of calculating the inclusive capture rate, targets the same population and is likely to draw from the same demand pool;

(B) for purposes of estimating the Restricted Market Rent targets the same population and is similar in net rentable square footage and number of bedrooms; or

(C) for purposes of estimating the subject Unit market rent does not have any income or rent restrictions and is similar in net rentable square footage and number of bedrooms.

(7) Contract Rent--Maximum rent limits based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(8) DCR--Debt Coverage Ratio. Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." A measure of the number of times loan principal and interest are covered by Net Operating Income.

(9) Development--Sometimes referred to as the "Subject Development." Multi-unit residential housing that meets the affordability requirements for and requests or has received funds from one or more of the Department's sources of funds.

(10) EGI--Effective Gross Income. The sum total of all sources of anticipated or actual income for a rental Development less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(11) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Tax Credit Allocation.

(12) ESA--Environmental Site Assessment. An environmental report that conforms with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §1.35 of this subchapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(13) First Lien Lender--A lender whose lien has first priority.

(14) Gross Capture Rate--The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand.

(15) Gross Demand--The sum of Potential Demand from the Primary Market (PMA), demand from other sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25% of Gross Demand.

(16) Gross Program Rent--Sometimes called the "Program Rents." Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance which are developed by program and by county or Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") or national non-metro area.

(17) Hard Costs--The sum total of direct construction costs, site work costs, off-site costs and contingency.

(18) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates or pricing conducted in accordance with §1.33 of this subchapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(19) Market Analyst--Any person who prepares a market study.

(20) Market Rent--The rent concluded by the Market Analyst for a particular unit type and size after adjustments are made to rents charged by owners of Comparable Units on properties without rent and income restrictions.

(21) NOI--Net Operating Income. The income remaining after all operating expenses, including replacement reserves and taxes have been paid.

(22) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(23) Primary Market--Sometimes referred to as "Primary Market Area" or "PMA." The area defined by the Qualified Market Analyst as described in §1.33(d)(9) of this subchapter from which a

proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(24) Property Condition Assessment--Sometimes referred to as "PCA," "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the property. The PCA must be prepared in accordance with §1.36 of this subchapter (relating to Property Condition Assessment Rules and Guidelines) as it relates to a specific Development.

(25) Qualified Market Analyst--A real estate appraiser certified or licensed by the Texas Appraiser Licensing and Certification Board, a real estate consultant, or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's performance, experience, and educational background will provide the general basis for determining competency as a Market Analyst. Competency will be determined by the Department, in its sole discretion. The Qualified Market Analyst must be a Third Party.

(26) Relevant Supply--The relevant supply of proposed and unstabilized Comparable Units includes:

(A) The proposed subject Units;

(B) Comparable Units with priority over the subject, based on the Department's evaluation process described in §49.7(g) of this title (relating to Application Process), that have made application to TDHCA and have not been presented to the TDHCA Board for decision; and

(C) Comparable Units in previously approved but Unstabilized Developments in the Primary Market Area (PMA); and

(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(27) Rent Over-Burdened Households--Non-elderly households paying more than 35% of gross income towards total housing expenses (unit rent plus utilities) and elderly households paying more than 50% of gross income towards total housing expenses.

(28) Reserve Account--An individual account:

(A) Created to fund any necessary repairs for a multifamily rental housing development; and

(B) Maintained by a First Lien Lender or Bank Trustee.

(29) Restricted Market Rent--The restricted rent concluded by the Qualified Market Analyst for a particular unit type and size after adjustments are made to rents charged by owners of Comparable Units on properties with the same rent and income restrictions.

(30) Secondary Market--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §1.33(d)(8) of this subchapter.

(31) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(32) Supportive Housing--Residential Rental Developments intended for occupancy by individuals or households transitioning from homelessness, at risk of homelessness, or in need of specialized and specific social services.

(33) TDHCA Operating Expense Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Chapter 60, Subchapter A of this title (relating to Compliance Monitoring), and published on the Department's web site.

(34) Underwriter--The author(s) of the Credit Underwriting Analysis Report.

(35) Unstabilized Development--A Development with Comparable Units that has been approved for funding by the TDHCA Board or is currently under construction or has not maintained a 90% occupancy level for at least twelve (12) consecutive months following construction completion.

(36) Utility Allowance--The estimate of tenant-paid utilities, based either on the most current HUD Form 52667, "Section 8, Existing Housing Allowance for Tenant-Furnished Utilities and Other Services," provided by the local entity responsible for administering the HUD Section 8 program with most direct jurisdiction over the majority of the buildings existing, a documented estimate from the utility provider proposed in the Application, or for an existing development an allowance calculated by the Department pursuant to §60.109 of this title (relating to Utility Allowances). Documentation from the local utility provider to support an alternative calculation can be used to justify alternative Utility Allowance conclusions but must be specific to the subject development and consistent with the building plans provided.

(37) Work Out Development--A financially distressed Development seeking a change in the terms of Department funding or program restrictions based upon market changes.

(c) Appeals. Certain programs contain express appeal options. Where not indicated, §1.7 of this chapter (relating to Staff Appeals Process) and §1.8 of this chapter (relating to Board Appeals Process) include general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution (ADR) methods, as outlined in §1.17 of this chapter.

§1.32. Underwriting Rules and Guidelines.

(a) General Provisions. The Department Governing Board has authorized the development of these rules under its authority under §2306.148, Texas Government Code. The rules provide a mechanism to produce consistent information in the form of a Credit Underwriting Analysis Report to provide interested parties information the Board relies upon in balancing the desire to assist as many Texans as possible by providing no more financing than necessary and have independent verification that Developments are economically feasible. The Report should consider all information timely provided by the Applicant. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development by the Department.

(b) Report Contents. The Report provides an organized and consistent synopsis and reconciliation of the application information submitted by the Applicant. The Report will be based solely upon information that is provided in accordance with the time frames provided in the current Qualified Allocation Plan (QAP), Program Rules, or Notice of Funds Availability as appropriate. The Report should also identify the number of revisions and date of most current revision to any information deemed to be relevant by the Underwriter.

(c) Recommendations in the Report. The conclusion of the Report includes a recommended award of funds or allocation of Hous-

ing Tax Credits based on the lesser amount calculated by the program limit method, if applicable, gap/DCR method, or the amount requested by the Applicant as further described in paragraphs (1) - (3) of this subsection, and states any feasibility conditions to be placed on the award.

(1) Program Limit Method. For Developments requesting Housing Tax Credits, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is as defined in the QAP. For Developments requesting funding through a Department program other than Housing Tax Credits, this method is based upon calculation of the funding limit based on current program rules at the time of underwriting.

(2) Gap/DCR Method. This method evaluates the amount of funds needed to fill the gap created by total development cost less total non-Department-sourced funds or Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee down to zero before reducing the amount of Department funds or Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Tax Credits. In making this determination, the Department adjusts the permanent loan amount and/or any Department-sourced loans, as necessary, such that it conforms to the DCR standards described in this section.

(3) The Amount Requested. The amount of funds that is requested by the Applicant as reflected in the Application documentation.

(d) Operating Feasibility. The operating financial feasibility of Developments funded by the Department is tested by subtracting operating expenses, including replacement reserves and taxes, from EGI to determine Net Operating Income. This Net Operating Income is divided by the annual debt service to determine the Debt Coverage Ratio. The Underwriter characterizes a Development as infeasible from an operational standpoint when the Debt Coverage Ratio does not meet the minimum standard set forth in paragraph (4)(D) of this subsection. The Underwriter may choose to make adjustments to the financing structure, such as lowering the debt and increasing the deferred developer fee, which could result in a re-characterization of the Development as feasible based upon specific conditions set forth in the Report.

(1) Income. In determining the Year 1 proforma, the Underwriter evaluates the reasonableness of the Applicant's income estimate by determining the appropriate rental rate per unit based on contract, program and market factors. Miscellaneous income and vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are applied unless well-documented support is provided.

(A) Rental Income. The Underwriter will update the utility allowance and calculate the appropriate rent on a conservative or Contract Rent basis for comparison to the Applicant's estimate in the Application. To determine the conservative basis, the Underwriter may consider the current rent roll of the subject Development and/or documentation of rents for Comparable Units; this shall be referred to as the "Underwriter's independently verified rents." The conservative basis for a restricted unit is the lesser of the Gross Program Rent less Utility Allowances ("Net Program Rent") or Restricted Market Rent or the Underwriter's independently verified rents. The conservative basis for an unrestricted unit is the lesser of the Market Rent, or Applicant's projected rent where the Applicant's projected rent is reasonable to the Underwriter as supported by documentation of Comparable Units, or the Underwriter's independently verified rents. Where Contract Rents are included, they will be used regardless of the conservative basis derived rent.

(i) Market Rents. The Underwriter reviews the attribute adjustment matrix of Comparable Units by unit size provided by the Market Analyst and determines if the adjustments and conclusions made are reasoned and well documented. The Underwriter uses the Market Analyst's conclusion of adjusted Market Rent by unit, as long as the proposed Market Rent is reasonably justified and does not exceed the highest existing unadjusted market comparable rent. Random checks of the validity of the Market Rents may include direct contact with the comparable properties. The Market Analysts attribute adjustment matrix should include, at a minimum, adjustments for location, size, amenities, and concessions as more fully described in §1.33 of this subchapter (relating to Market Analysis Rules and Guidelines).

(ii) Restricted Market Rent. The Underwriter reviews the attribute adjustment matrix of Comparable Units by unit size and income and rent restrictions provided by the Market Analyst and determines if the adjustments and conclusions made are reasoned and well documented. The Underwriter uses the Market Analyst's conclusion of adjusted Restricted Market Rent by unit, as long as the proposed Restricted Market Rent is reasonably justified and does not exceed the highest existing unadjusted market comparable restricted rent. Random checks of the validity of the Restricted Market Rents may include direct contact with the comparable properties. The Market Analysts attribute adjustment matrix should include, at a minimum, adjustments for location, size, amenities, and concessions as more fully described in §1.33 of this subchapter.

(iii) Gross Program Rents less Utility Allowance or Net Program Rents. The Underwriter reviews the Applicant's proposed rent schedule and determines if it is consistent with the representations made in the remainder of the Application. The Underwriter uses the Gross Program Rents as promulgated by the Department's division responsible for compliance for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all of the Applications are underwritten with the rents promulgated for the same year. Gross Program Rents are reduced by the Utility Allowance. If Program Rents are adjusted by the Department after the close of the Application Acceptance Period but prior to publication of the Report, the Underwriter will adjust the Applicant's EGI to account for any increase or decrease in Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(I) Units must be individually metered for all utility costs to be paid by the tenant.

(II) Gas utilities are verified on the building plans and elsewhere in the Application when applicable.

(III) Trash allowances paid by the tenant are rare and only considered when the building plans allow for individual exterior receptacles.

(IV) Refrigerator and range allowances are not considered part of the tenant-paid utilities unless the tenant is expected to provide their own appliances, and no eligible appliance costs are included in the development cost breakdown.

(iv) Contract Rents. The Underwriter reviews submitted rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The underwriting analysis will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used in the underwriting analysis with the recommendations of the Report conditioned upon receipt of final approval of such increase.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including but not limited to late fees, storage fees, laundry income, interest on deposits, carport rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $20 per unit per month range. Exceptions may be made at the discretion of the Underwriter for garage income, pass-through utility payments, pass-through water, sewer and trash payments, cable fees, congregate care/assisted living/elderly facilities, and child care facilities.

(i) Exceptions must be justified by operating history of existing comparable properties within the PMA or SMA.

(ii) The Applicant must show that the tenant will not be required to pay the additional fee or charge as a condition of renting an apartment unit and must show that the tenant has a reasonable alternative.

(iii) The Applicant's operating expense schedule should reflect an offsetting cost associated with income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iv) Collection rates of exceptional fee items will generally be heavily discounted.

(v) If an additional fee is charged for the use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be reduced from Eligible Basis for Tax Credit Developments.

(C) Vacancy and Collection Loss. The Underwriter uses a vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss) unless the Market Analysis reflects a higher or lower established vacancy rate for the area. Elderly and 100% project-based rental subsidy Developments and other well documented cases may be underwritten at a combined 5% at the discretion of the Underwriter if the historical performance reflected in the Market Analysis is consistently higher than a 95% occupancy rate.

(D) Effective Gross Income. The Underwriter independently calculates EGI. If the EGI figure provided by the Applicant is within 5% of the EGI figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter will maintain and use its independent calculation unless the Applicant's proforma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. In determining the Year 1 proforma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate by line item comparisons based upon the specifics of each transaction, including the type of Development, the size of the units, and the Applicant's expectations as reflected in their proforma. Historical stabilized certified or audited financial statements of the Development or Third Party quotes specific to the Development will reflect the strongest data points to predict future performance. The Department's database of properties in the same location or region as the proposed Development also provides heavily relied upon data points; the Department's database summary is available on the TDHCA website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as Public Housing Authority ("PHA") Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by experience of third parties not related to the contractor or component vendor. Finally, well documented information provided in the Market Analysis, the Application, and other sources may be considered.

(A) General and Administrative Expense. General and Administrative Expense includes all accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. The underwriting tolerance level for this line item is 20%.

(B) Management Fee. Management Fee is paid to the property management company to oversee the effective operation of the property and is most often based upon a percentage of Effective Gross Income as documented in the management agreement contract. Typically, 5% of the Effective Gross Income is used, though higher percentages for rural transactions that are consistent with the TDHCA Database can be concluded. Percentages as low as 3% may be utilized if documented by a fully executed management contract agreement with an acceptable management company. The Underwriter will require documentation for any percentage difference from the 5% of the Effective Gross Income standard.

(C) Payroll and Payroll Expense. Payroll and Payroll Expense includes all direct staff payroll, insurance benefits, and payroll taxes including payroll expenses for repairs and maintenance typical of a conventional development. It does not, however, include direct security payroll or additional supportive services payroll. The underwriting tolerance level for this line item is 10%.

(D) Repairs and Maintenance Expense. Repairs and Maintenance Expense includes all repairs and maintenance contracts and supplies. It should not include extraordinary capitalized expenses that would result from major renovations. Direct payroll for repairs and maintenance activities are included in payroll expense. The underwriting tolerance level for this line item is 20%.

(E) Utilities Expense (Gas and Electric). Utilities Expense includes all gas and electric energy expenses paid by the owner. It includes any pass-through energy expense that is reflected in the EGI. The underwriting tolerance level for this line item is 30%.

(F) Water, Sewer and Trash Expense. Water, Sewer and Trash Expense includes all water, sewer and trash expenses paid by the owner. It would also include any pass-through water, sewer and trash expense that is reflected in the EGI. The underwriting tolerance level for this line item is 30%.

(G) Insurance Expense. Insurance Expense includes any insurance for the buildings, contents, and liability but not health or workman's compensation insurance. The underwriting tolerance level for this line item is 30%.

(H) Property Tax. Property Tax includes all real and personal property taxes but not payroll taxes. The underwriting tolerance level for this line item is 10%.

(i) The per unit assessed value will be calculated based on the capitalization rate published on the county taxing authority's website. If the county taxing authority does not publish a capitalization rate on the internet, a capitalization rate of 10% will be used or comparable assessed values may be used in evaluating this line item expense.

(ii) Property tax exemptions or "Proposed Payment In Lieu Of Tax" agreement (PILOT) must be documented as being reasonably achievable if they are to be considered by the Underwriter. At the discretion of the Underwriter, a property tax exemption that meets

known federal, state and local laws may be applied based on the tax-exempt status of the Development Owner and its Affiliates.

(I) Reserves. Reserves include annual reserve for replacements of future capitalizable expenses as well as any ongoing additional operating reserve requirements. The Underwriter includes minimum reserves of $250 per unit for new construction and $300 per unit for all other Developments. The Underwriter may require an amount above $300 for Developments other than new construction based on information provided in the PCA. The Applicant's expense for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the PCA during the first 15 years of the long term proforma. Higher levels of reserves also may be used if they are documented in the financing commitment letters.

(J) Other Expenses. The Underwriter will include other reasonable and documented expenses, not including depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. Lender or syndicator's asset management fees or other ongoing partnership fees also are not considered in the Department's calculation of debt coverage. The most common other expenses are described in more detail in clauses (i) - (iv) of this subparagraph.

(i) Supportive Services Expense. Supportive Services Expense includes the documented cost to the owner of any non-traditional tenant benefit such as payroll for instruction or activities personnel. The Underwriter will not evaluate any selection points for this item. The Underwriter's verification will be limited to assuring any anticipated costs are included. For all transactions supportive services expenses are considered in calculating the Debt Coverage Ratio.

(ii) Security Expense. Security Expense includes contract or direct payroll expense for policing the premises of the Development. The Applicant's amount is typically accepted as provided. The Underwriter will require documentation of the need for security expenses that exceed 50% of the anticipated payroll expense estimate discussed in subparagraph (C) of this paragraph.

(iii) Compliance Fees. Compliance fees include only compliance fees charged by TDHCA. The Department's charge for a specific program may vary over time; however, the Underwriter uses the current charge per unit per year at the time of underwriting. For all transactions compliance fees are considered in calculating the Debt Coverage Ratio.

(iv) Cable Television Expense. Cable Television Expense includes fees charged directly to the owner of the Development to provide cable services to all units. The expense will be considered only if a contract for such services with terms is provided and income derived from cable television fees is included in the projected EGI. Cost of providing cable television in only the community building should be included in General and Administrative Expense as described in subparagraph (A) of this paragraph.

(K) The Department will communicate with and allow for clarification by the Applicant when the overall expense estimate is over 5% greater or less than the Underwriter's estimate. In such a case, the Underwriter will inform the Applicant of the line items that exceed the tolerance levels indicated in this paragraph, but may request additional documentation supporting some, none or all expense line items. If a rationale acceptable to the Underwriter for the difference is not provided, the discrepancy is documented in the Report and the justification provided by the Applicant and the countervailing evidence supporting the Underwriter's determination is noted. If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter will maintain and use its independent calculation unless the Applicant's Year 1 proforma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income. NOI is the difference between the EGI and total operating expenses. If the Year 1 NOI figure provided by the Applicant is within 5% of the Year 1 NOI figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating the Year 1 DCR the Underwriter will maintain and use his independent calculation of NOI unless the Applicant's Year 1 EGI, Year 1 total expenses, and Year 1 NOI are each within 5% of the Underwriter's estimates.

(4) Debt Coverage Ratio. Debt Coverage Ratio is calculated by dividing Net Operating Income by the sum of loan principal and interest for all permanent sources of funds. Loan principal and interest, or "Debt Service," is calculated based on the terms indicated in the submitted commitments for financing. Terms generally include the amount of initial principal, the interest rate, amortization period, and repayment period. Unusual financing structures and their effect on Debt Service will also be taken into consideration.

(A) Interest Rate. The interest rate used should be the rate documented in the commitment letter. Commitments indicating a variable rate must provide a detailed breakdown of the component rates comprising the all-in rate. The commitment must also state the lender's underwriting interest rate, or the Applicant must submit a separate statement executed by the lender with an estimate of the interest rate as of the date of the statement. The Underwriter may challenge the interest rate based on data collected on similarly structured transactions.

(B) Amortization Period. The Department requires an amortization of not less than thirty (30) years and not more than forty (40) years (fifty (50) years for federally sourced loans), or an adjustment to the amortization structure is evaluated and recommended. In non-Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period.

(C) Repayment Period. For purposes of projecting the DCR over a 30-year period for Developments with permanent financing structures with balloon payments in less than thirty (30) years, the Underwriter will carry forward Debt Service calculated based on a full amortization and the interest rate stated in the commitment.

(D) Acceptable Debt Coverage Ratio Range. The acceptable Year 1 DCR range for all priority or foreclosable lien financing plus the Department's proposed financing falls between a minimum of 1.15 to a maximum of 1.35. HOPE VI and USDA Rural Development transactions may underwrite to a DCR less than 1.15 or greater than 1.35 based upon documentation of acceptance from the lender.

(i) For Developments other than HOPE VI and USDA Rural Development transactions, if the DCR is less than the minimum, the recommendations of the Report are conditioned upon a reduced debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause.

(I) A reduction of the interest rate or an increase in the amortization period for TDHCA funded loans;

(II) A reclassification of TDHCA funded loans to reflect grants, if permitted by program rules;

(III) A reduction in the permanent loan amount for non-TDHCA funded loans based upon the rates and terms in the

permanent loan commitment letter as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) If the DCR is greater than the maximum, the recommendations of the Report may be based upon an increase in the debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause.

(I) A reclassification of TDHCA funded grants to reflect loans, if permitted by program rules;

(II) An increase in the interest rate or a decrease in the amortization period for TDHCA funded loans;

(III) An increase in the permanent loan amount for non-TDHCA funded loans based upon the rates and terms in the permanent loan commitment letter as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Tax Credit allocation may be made based on the gap/DCR method described in subsection (c)(2) of this section.

(iv) Although adjustments in Debt Service may become a condition of the Report, future changes in income, expenses, and financing terms could allow for an acceptable DCR.

(5) Long Term Proforma. The Underwriter will create a 30-year operating proforma.

(A) The base year projection utilized is the Underwriter's Year 1 EGI, Year 1 operating expenses, and Year 1 NOI unless the Applicant's Year 1 EGI, Year 1 total operating expenses, and Year 1 NOI are each within 5% of the Underwriter's estimates.

(B) A 2% annual growth factor is utilized for income and a 3% annual growth factor is utilized for expenses.

(C) Adjustments may be made to the Long Term Proforma if sufficient support documentation is provided by the Applicant. Support may include:

(i) Documentation with terms for project-based rental assistance or operating subsidy;

(ii) A fully executed management contract with clear terms;

(iii) Documentation prepared and signed by the Central Appraisal District (CAD) with jurisdiction over the Development indicating the appraisal methodology consistently employed by the CAD and a ten-year history, beginning with the Application year, of tax rates for each taxing district with jurisdiction over the Development; and

(iv) Required reserve for replacement schedule prepared and signed by the proposed permanent lender or equity provider. In no instance will the reserve for replacement figure included in the Long Term Proforma be less than the minimum requirements as described in §1.37 of this subchapter (relating to Reserve for Replacement Rules and Guidelines).

(e) Development Costs. The Development's need for permanent funds and, when applicable, the Development's Eligible Basis is based upon the projected total development costs. The Department's estimate of the total development cost will be based on the Applicant's project cost schedule to the extent that it can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For new construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's total development cost is within 5% of the Underwriter's estimate. The Department's estimate of the total development cost for acquisition/rehabilitation will be based in accordance with the PCA's estimated cost for the scope of work as defined by the Applicant and §1.36(a)(5) of this subchapter (relating to Property Condition Assessment Guidelines). In the case of a rehabilitation Development, the Underwriter may use a lower tolerance level due to the reliance upon the PCA. If the Applicant's total development cost is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's total cost estimate.

(1) Acquisition Costs. The proposed acquisition price is verified with the fully executed site control document(s) for the entire proposed site.

(A) Excess Land Acquisition. Where more land is being acquired than will be utilized for the site and the remainder acreage is not being utilized as permanent green space, the value ascribed to the proposed Development will be prorated based on acreage from the total cost reflected in the site control document(s). An appraisal containing segregated values for the total acreage, the acreage for the subject site and the remainder acreage, or tax assessment value may be tools that are used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the site control document(s).

(B) Identity of Interest Acquisitions.

(i) The acquisition will be considered an identity of interest transaction when an Affiliate of, a Related Party to, or any owner at any level of the Development Team or permanent lender:

(I) Is the current owner in whole or in part of the proposed property; or

(II) Was the owner in whole or in part of the proposed property during any period within the thirty-six (36) months prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide subclauses (I) and (II) of this clause.

(I) The original acquisition cost listed in the submitted settlement statement or, if a settlement statement is not available, the original asset value listed in the most current audited financial statement for the identity of interest owner; and

(II) If the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost claimed in the application:

(-a-) an appraisal that meets the requirements of §1.34 of this subchapter (relating to Appraisal Rules and Guidelines); and

(-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include Property taxes, interest expense, capitalized costs of any physical improvements made to the Property that benefit the proposed Development, the cost of rezoning, replatting, and any off-site costs to provide utilities or improve access to the Property that benefit the proposed Development. Additionally, an annual return of 10% may be applied to the original acquisition cost and documented holding and improvement costs; this return can be applied from the date the applicable cost is incurred until the date of

the Department's Board meeting at which the subject Development's award will be considered.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise maintained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10% may be applied to the original acquisition cost and documented holding and improvement costs; this return can be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the subject Development's award will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include operating expenses, including, but not limited to, property taxes and interest expense.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. The resulting acquisition cost will be referred to as the "identity of interest adjusted acquisition cost."

(C) Acquisition of Buildings for Tax Credit Properties. In order to make a determination of the appropriate building acquisition value, the Applicant will provide and the Underwriter will utilize an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §1.34 of this subchapter. The building acquisition value utilized by the Underwriter will be equal to the least of the following:

(i) The Applicant's claimed building acquisition value;

(ii) The building acquisition value that results from the proration of the actual acquisition cost or identity of interest adjusted acquisition cost based upon a calculated "as-is" improvement value over the total "as-is" value provided in the appraisal; or

(iii) The actual acquisition cost or identity of interest adjusted acquisition cost less the land value in the appraisal.

(2) Off-Site Costs. Off-Site costs are costs of development up to the site itself such as the cost of roads, water, sewer and other utilities to provide the site with access. All off-site costs must be well documented and certified by a Third Party engineer on the required application form. If off-site costs are included in eligible basis based on PLR 200916007, a statement of findings from a CPA must also be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the development matches the fact pattern in PLR 200916007. A certification from a Third Party engineer must also be provided that describes the circumstances of the necessity of the off-site improvement, including the relevant requirements of the local jurisdiction with authority over building codes.

(3) Site Work Costs. Project site work costs exceeding $9,000 per Unit, exclusive of ineligible demolition costs, must be well documented and certified by a Third Party engineer on the required application form. In addition, for Applicants seeking Tax Credits, documentation in keeping with §49.8(7)(C) of this title (relating to Threshold Criteria) will be utilized in calculating eligible basis.

(4) Direct Construction Costs. Direct construction costs are the costs of materials and labor required for the building or rehabilitation of a Development.

(A) New Construction. The Underwriter will use the Marshall and Swift Residential Cost Handbook or equivalent other comparable published third-party cost estimating data source and historical final cost certifications of all previous Housing Tax Credit allocations to estimate the direct construction cost for a new construction Development. If the Applicant's estimate is more than 5% greater or less than the Underwriter's estimate, the Underwriter will attempt to reconcile this concern and ultimately identify this as a cost concern in the Report.

(i) The "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or equivalent other comparable published third-party data source, based upon the details provided in the application and particularly site and building plans and elevations will be used to estimate direct construction costs. If the Development contains amenities or specifications not included in the Average Quality standard, the Department will take into account these costs.

(ii) If the difference in the Applicant's direct cost estimate and the direct construction cost estimate detailed in clause (i) of this subparagraph is more than 5%, the Underwriter shall also evaluate the direct construction cost of the Development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous housing tax credit allocations for:

(I) the county in which the Development is to be located; or

(II) if cost certifications are unavailable under subclause (I) of this clause, the uniform state service region in which the Development is to be located; or

(III) other Developments by the same Applicant that are similar in design to the subject Development.

(B) Rehabilitation including Reconstruction Costs. In the case where the Applicant has provided a PCA which is inconsistent with the Applicant's figures as proposed in the development cost schedule and/or the Applicant's scope of work, the Underwriter may request a supplement executed by the PCA provider reconciling the Applicant's estimate and detailing the difference in costs. If said supplement is not provided or the Underwriter determines that the reasons for the initial difference in costs are not well-documented, the Underwriter utilizes the initial PCA estimations in lieu of the Applicant's estimates.

(5) Contingency. All contingencies identified in the Applicant's project cost schedule including any soft cost contingency will be added to Contingency with the total limited to the guidelines detailed in this paragraph. Contingency is limited to a maximum of 7% of direct construction costs plus site work for new construction Developments and 10% of direct construction costs plus site work for rehabilitation Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible direct construction costs plus eligible site work costs in calculating the eligible contingency cost. The Applicant's figure is used by the Underwriter if the figure is less than 7% or 10%, as applicable.

(6) Contractor Fee. Contractor fees are limited to a total of 14% on Developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16% on Developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18% on Developments with Hard Costs at $2 million or less. For tax credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from TX-USDA-RHS, the combination of builder's general requirements, builder's over-

head, and builder's profit should not exceed the lower of TDHCA or TX-USDA-RHS requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible construction costs but will be ineligible for tax credit basis purposes.

(7) Developer Fee. Developer fee claimed must be multiplied by the appropriate applicable percentage depending whether it is attributable to acquisition or rehabilitation basis. Additional fees for ineligible costs will be limited to the same percentage of ineligible development costs (15% for Developments with 50 or more units, or 20% for Developments with 49 or fewer units) but will be ineligible for tax credit basis purposes. All fees to related parties to the owner or developer for work determined by the Underwriter to be typically completed by the developer will be considered part of the Developer fee claimed.

(A) For Tax Credit Developments, the development cost associated with developer fees and Development Consultant (also known as Housing Consultant) fees included in Eligible Basis cannot exceed 15% of the project's Total Eligible Basis less developer fees for Developments proposing 50 units or more and 20% of the project's Total Eligible Basis less developer fees for Developments proposing 49 units or less, as defined in the Qualified Allocation Plan and Rules (QAP).

(B) In the case of a transaction requesting acquisition Tax Credits:

(i) the allocation of eligible developer fee in calculating rehabilitation/new construction Tax Credits will not exceed 15% of the rehabilitation/new construction basis less developer fees for Developments proposing 50 units or more and 20% of the rehabilitation/new construction basis less developer fees for Developments proposing 49 units or less; and

(ii) no developer fee attributable to an identity of interest acquisition of the Development will be included in Eligible Basis.

(C) For non-Tax Credit Developments, the percentage can be up to 15% but is based upon total development costs less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any other identity of interest acquisition cost.

(8) Financing Costs. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the commitment. Any excess over this amount is removed to ineligible cost and will not be considered in the determination of developer fee included in Eligible Basis.

(9) Reserves. The Department will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses less management fees and reserve for replacements plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the conventional lender or syndicator if the detail for such greater amount is well documented in the conventional lender or syndicator commitment letter.

(10) Other Soft Costs. For Tax Credit Developments all other soft costs are divided into eligible and ineligible costs. Eligible costs are defined by Internal Revenue Code but generally are costs that can be capitalized in the basis of the Development for tax purposes. Ineligible costs are those that tend to fund future operating activities. The Underwriter will evaluate and accept the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Internal Revenue Code. If the Underwriter questions the eligibility of any soft costs, the Applicant is given an opportunity to clarify and address the concern prior to removal from Eligible Basis.

(f) Developer Capacity. The Department will review personal credit reports for development sponsors, developer fee recipients and those individuals anticipated to guarantee the completion of the Development. The Underwriter will evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements in the QAP and statute.

(g) Other Underwriting Considerations. The Underwriter will evaluate numerous additional elements as described in subsection (b) of this section and those that require further elaboration are identified in this subsection.

(1) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) The Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain; or

(C) The Development must be designed to comply with the QAP, as proposed.

(2) The Underwriter will identify in the report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject.

(3) Supportive Housing. The unique development and operating characteristics of Supportive Housing Developments may require special consideration in the following areas:

(A) Operating Income. The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50% AMI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;

(B) Operating Expenses. A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical Affordable Housing Developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments provided by the Applicant or otherwise available to the Underwriter;

(C) DCR and Long Term Feasibility. Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative cash flows. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of the following: executed subsidy commitment(s); set-aside of Applicant's financial resources; to be substantiated by an audited financial statement evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used

to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or

(D) Development Costs. For Supportive Housing that is styled as efficiencies, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the application, as a base cost in evaluating the reasonableness of the Applicant's direct construction cost estimate for new construction Developments.

(h) Work Out Development. Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) Feasibility Conclusion. An infeasible Development will not be recommended for funding or allocation unless the Underwriter can determine a plausible alternative feasible financing structure and conditions the recommendations of the report upon receipt of documentation supporting the alternative feasible financing structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) and (4) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) Gross Capture Rate. The method for determining the Gross Capture Rate for a Development is defined in §1.33(d)(11)(F) of this subchapter. The Underwriter will independently verify all components and conclusions of the Gross Capture Rate and may at their discretion use independently acquired demographic data to calculate demand and may make a determination of the effective Gross Capture Rate based upon an analysis of the Sub-market. The Development:

(A) is characterized as a Qualified Elderly Development (including the Elderly section of an Intergenerational Development) and the Gross Capture Rate exceeds 10% for the total proposed units; or

(B) is in an Urban Area and targets the general population, and the Gross Capture Rate exceeds 10% for the total proposed units; or

(C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30%; or

(D) targets Persons with Special Needs and the Gross Capture rate exceeds 30%.

(E) Developments meeting the requirements of subparagraph (A), (B), (C), or (D) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.

(i) Replacement Housing. The proposed Development is comprised of Affordable Housing which replaces previously existing Affordable Housing within the Primary Market Area as defined in §1.33 of this subchapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing Affordable Housing a leasing preference.

(ii) Existing Housing. The proposed Development is comprised of existing Affordable Housing which is at least 50% occupied and gives displaced existing tenants a leasing preference as stated in the submitted relocation plan.

(2) Deferred Developer Fee. Developments requesting an allocation of tax credits cannot repay the estimated deferred developer fee, based on the Underwriter's recommended financing structure, from cashflow within the first fifteen (15) years of the long term proforma as described in subsection (d)(5) of this section.

(3) Restricted Market Rent. The Restricted Market Rent for units with rents restricted at 60% of AMGI is less than both the Net Program Rent and Market Rent for units with rents restricted at or below 50% of AMGI unless the Applicant accepts all Underwriting recommendation that all restricted units have rents and incomes restricted at or below the 50% of AMGI level.

(4) Initial Feasibility. The Year 1 annual total operating expense divided by the Year 1 Effective Gross Income is greater than 68% for rural developments 36 units or less and 65% for all other developments.

(5) Long Term Feasibility. Any year in the first fifteen (15) years of the Long Term Proforma, as defined in subsection (d)(5) of this section, reflects:

(A) negative Cash Flow; or

(B) a Debt Coverage Ratio below 1.15.

(6) Exceptions. The infeasibility conclusions may be excepted where either of the following apply.

(A) The requirements in this subsection may be waived by the Executive Director of the Department on appeal if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.

(B) Developments meeting the requirements of one or more of paragraphs (3) - (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (vi) of this subparagraph apply.

(i) The Development will receive Project-based Section 8 Rental Assistance for at least 50% of the units and a firm commitment with terms including contract rent and number of units is submitted at application.

(ii) The Development will receive rental assistance for at least 50% of the units in association with USDA-RD-RHS financing.

(iii) The Development will be characterized as public housing as defined by HUD for at least 50% of the units.

(iv) The Development will be characterized as Supportive Housing for at least 50% of the units and evidence of adequate financial support for the long term viability of the Development is provided.

(v) The Development has other long term project based restrictions on rents for at least 50% of the units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10% lower than both the Net Program Rent and Restricted Market Rent.

(vi) The units not receiving Project-based Section 8 Rental Assistance or rental assistance in association with USDA-RD-RHS financing, or not characterized as public housing do not propose rents that are less than the Project-based Section 8, USDA-RD-RHS financing, or public housing units.

§1.33. Market Analysis Rules and Guidelines.

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section.

(b) Self-Contained. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) Market Analyst Qualifications. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst (§2306.67055.) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

(1) If not listed as approved by the Department, Market Analysts must submit subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the Application Acceptance Period for which the Market Analyst must be approved. To maintain status as an approved Qualified Market Analyst, updates to the items described in subparagraphs (A) - (C) of this paragraph must be submitted annually on the first Monday in February for review by the Department.

(A) Documentation of good standing from the Texas Comptroller of Public Accounts.

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis.

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.

(D) General information regarding the firm's experience including references, the number of previous similar assignments and time frames in which previous assignments were completed.

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the application round in which each Market Analysis is submitted.

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the application round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least ninety (90) prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(3) The list of approved Qualified Market Analysts is posted on the Department's web site and updated within seventy-two (72) hours of a change in the status of a Market Analyst.

(d) Market Analysis Contents. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) Title Page. Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Summary Sheet. Include the Department's Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

(6) Identification of the Property. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) Statement of Ownership. Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.

(8) Secondary Market Area. All of the Market Analyst's conclusions specific to the subject Development must be based on only one Secondary Market Area definition. The entire PMA, as described in this paragraph, must be contained within the Secondary Market boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the secondary market area. (§2306.67055)

(A) The Secondary Market Area will be defined by the Market Analyst with:

(i) size based on a base year population of no more than 250,000 people inclusive of the Primary Market Area; and

(ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau.

(B) The Market Analyst's definition of the Secondary Market Area must include:

(i) a detailed description of why the subject Development is expected to draw a significant number of tenants or homebuyers from the defined SMA;

(ii) a complete demographic report for the defined SMA; and

(iii) a scaled distance map indicating the SMA boundaries as well as the location of the subject Development and all comparable Developments.

(9) Primary Market Area. All of the Market Analyst's conclusions specific to the subject Development must be based on only one Primary Market Area definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The Primary Market Area will be defined by the Market Analyst with:

(i) size based on a base year population of no more than 100,000 people;

(ii) boundaries based on U.S. census tracts, zip codes, or place, as defined by the U.S. Census Bureau; and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract or zip code, and if the PMA is defined by census tract or zip code.

(B) The Market Analyst's definition of the Primary Market Area must include:

(i) a detailed description of why the subject Development is expected to draw a majority of its prospective tenants or homebuyers from the defined PMA;

(ii) a complete demographic report for the defined PMA; and

(iii) a scaled distance map indicating the PMA boundaries as well as the location of the subject Development and all comparable Developments.

(C) Comparable Units. Identify Developments in the PMA with Comparable Units. In Primary Market Areas lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable location adjustments. Provide a data sheet for each Development consisting of:

(i) Development name;

(ii) Address;

(iii) Year of construction and year of rehabilitation, if applicable;

(iv) Property condition;

(v) Population target;

(vi) Unit mix specifying number of Bedrooms, number of baths, net rentable square footage; and

(I) monthly rent and utility allowance; or

(II) sales price with terms, marketing period and date of sale;

(vii) Description of concessions;

(viii) List of unit amenities;

(ix) Utility structure;

(x) List of common amenities; and

(xi) For rental developments only;

(I) occupancy; and

(II) turnover.

(10) Market Information:

(A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:

(i) total housing;

(ii) rental developments (all multi-family);

(iii) Affordable Housing;

(iv) Comparable Units;

(v) Unstabilized Comparable Units; and

(vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development (§1.32(d)(1)(C) of this subchapter relating to Underwriting Rules and Guidelines). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

(i) number of Bedrooms;

(ii) quality of construction (class);

(iii) Targeted Population; and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports.

(i) All demographic reports must include population and household data for a five (5) year period with the year of application as the base year;

(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations; and

(iii) For Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to elderly population for an elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the following they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of application as the base year.

(II) Target. If applicable, adjust the household projections for the Qualified Elderly or special needs population targeted by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35% for the general population and 50% for Qualified Elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for efficiency units.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) Gross Demand. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25% of Gross Demand.

(iii) Potential Demand. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for efficiency units.

(II) For Developments targeting the general population:

(-a-) Minimum eligible income is based on a 35% rent to income ratio;

(-b-) Appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and

(-c-) The tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all units having three (3) or more bedrooms:

(-a-) Minimum eligible income is based on a 35% rent to income ratio;

(-b-) Appropriate household size is defined as 1.5 persons per bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) For Developments targeting the senior population:

(-a-) Minimum eligible income is based on a 50% rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households.

(iv) Demand from Secondary Market Area:

(I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;

(II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25% of Gross Demand; and

(III) The supply of proposed and unstabilized comparable units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.

(v) Demand from Other Sources:

(I) The source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

(II) Consideration of Demand from Other Sources is at the discretion of the Underwriter;

(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) If households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) Documentation of the number of vouchers administered by the local Housing Authority; and

(-b-) A complete demographic report for the area in which the vouchers are distributed.

(11) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand within the PMA.

(B) Rents. Provide a separate Market Rent and Restricted Market Rent conclusion for each proposed Unit type by number of Bedrooms and rent restriction category. Conclusions of Market Rent or Restricted Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §1.32(i) of this subchapter. Rent Adjustments. In support of the Market Rent and Restricted Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed unit type by number of Bedrooms and rental restriction category.

(i) The Department recommends use of HUD Form 92273.

(ii) A minimum of three developments must be represented on each attribute adjustment matrix.

(iii) Adjustments for concessions must be included, if applicable.

(iv) Total adjustments in excess of 15% must be supported with additional narrative.

(v) Total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent and Restricted Market Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) Demand:

(i) State the Gross Demand for each Unit type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom units restricted at 50% of AMFI; two-Bedroom units restricted at 60% of AMFI); and

(ii) State the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one unit due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

(E) Relevant Supply. The relevant supply of proposed and unstabilized comparable units includes:

(i) The proposed subject Units;

(ii) Comparable Units with priority over the subject that have made application to TDHCA and have not been presented to the TDHCA Board for decision;

(iii) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(iv) Comparable Units in previously approved but Unstabilized Developments in the SMA, in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. The Market Analyst must calculate a Gross Capture Rate for the subject Development as a whole, as well as for each Unit type by number of Bedrooms and rent restriction categories, and market rate Units, if applicable. Refer to §1.32(i) of this subchapter for feasibility criteria.

(G) A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(H) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(I) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(12) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(13) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market analysis considering the combined PMA's and all proposed and unstabilized units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§1.34. Appraisal Rules and Guidelines.

(a) General Provision. An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section.

(b) Self-Contained. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) Appraiser Qualifications. The qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) Appraisal Contents. An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

(1) Title Page. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.

(2) Letter of Transmittal. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Disclosure of Competency. Include appraiser's qualifications, detailing education and experience.

(5) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject property must be disclosed in the appraisal report.

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the site. Include a plat map and/or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject clearly identified.

(C) Zoning. Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (net rentable area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) Environmental Hazards. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (e.g., discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) Appraisal Process. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the cost approach is not applicable.

(A) Cost Approach. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three (3) year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.

(I) Property rights conveyed.

(II) Financing terms.

(III) Conditions of sale.

(IV) Location.

(V) Highest and best use.

(VI) Physical characteristics (e.g., topography, size, shape, etc.).

(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. This section should contain an adequate number of sales to provide the reader with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three (3) year sale history, complete description of the property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The net operating income statistics or the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject property.

(i) Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., unit type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The contract rents should be compared to the market-derived rents. A determination should be made as to whether the contract rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (e.g., IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) Capitalization. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate (OAR) is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) Value Estimates. Reconciliation final value estimate is required.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) Appraisal assignments for new construction are required to provide an "as completed" value of the proposed structures. These reports shall provide an "as restricted with favorable financing" value as well as an "unrestricted market" value.

(C) Reports on Properties to be rehabilitated shall address the "as restricted with favorable financing" value as well as both an "as is" value and an "as completed" value. The appraiser should consider the fee simple or leased fee interest as appropriate.

(D) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) Marketing Time. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) Photographs. Provide good quality color photographs of the subject property (front, rear, and side elevations, on-site amenities, interior of typical units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) Additional Appraisal Concerns. The appraiser(s) must be aware of Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§1.35. Environmental Site Assessment Rules and Guidelines.

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department should be conducted and reported in conformity with the standards of the American Society for Testing and Materials. The initial report should conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-05). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The environmental assessment shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to TDHCA as a User of the report (as defined by ASTM standards.) Copies of reports provided to TDHCA which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to TDHCA. The ESA report should also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the Environmental Site Assessment, and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) State if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the environmental site assessment or identified during the physical inspection;

(3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

(4) If the subject site includes any improvements or debris from pre-existing improvements, state if testing for asbestos containing materials (ACMs) would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) If the subject site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(6) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements; and

(7) Assess the potential for the presence of Radon on the property, and recommend specific testing if necessary.

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site but would nonetheless affect the Property, the Development Owner must act on such a recommendation or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as a TX-USDA-RHS funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this subsection.

§1.36. Property Condition Assessment Guidelines.

(a) General Provisions. The objective of the Property Condition Assessment is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the regulatory period and not less than thirty (30) years. For Developments proposing reconstruction, the PCA must only address costs to rehabilitate the existing buildings. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all rehabilitation costs and projected repairs and replacements through at least fifteen (15) years. The PCA must also include discussion and analysis of the following:

(1) Useful Life Estimates. For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(2) Code Compliance. The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Housing Sponsor or Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject property;

(3) Program Rules. The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, particular consideration being given to accessibility requirements, the Department's Housing Quality Standards, and any scoring criteria for which the Applicant may claim points;

(4) Statement of Acknowledgement. The PCA provider must affirm in the report that the Applicant's scope of work for improvements and the immediate needs of the rehabilitation are considered and reconciled within the PCA report and the PCA Cost Schedule Supplement; and

(5) Cost Estimates for Repair and Replacement. It is the responsibility of the Housing Sponsor or Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the development cost schedule and scope of work submitted as an exhibit of the Application.

(A) Immediately Necessary Repairs and Replacement. Systems or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional repair, replacement, or new construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.

(C) Expected Repair and Replacement Over Time. The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred

and no less than fifteen (15) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(b) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

(1) Fannie Mae's criteria for Physical Needs Assessments;

(2) Federal Housing Administration's criteria for Project Capital Needs Assessments;

(3) Freddie Mac's guidelines for Engineering and Property Condition Reports;

(4) TX-USDA-RHS guidelines for Capital Needs Assessment; or

(5) Standard and Poor's Property Condition Assessment Criteria: Guidelines for Conducting Property Condition Assessments, Multifamily Buildings.

(c) The Department may consider for acceptance reports prepared according to other standards which are not specifically named above in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(d) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to TDHCA as the client. Copies of reports provided to TDHCA which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to TDHCA. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA should be signed and dated by the report provider not more than six (6) months prior to the date of the application.

§1.37. Reserve for Replacement Rules and Guidelines.

(a) General Provisions. The Department will require Developments to provide regular maintenance to keep housing sanitary, safe and decent by maintaining a reserve for replacement in accordance with §2306.186 Texas Government Code. The reserve must be established for each unit in a Development of 25 or more rental units, regardless of the amount of rent charged for the unit. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section.

(b) The First Lien Lender shall maintain the reserve account through an escrow agent acceptable to the First Lien Lender to hold reserve funds in accordance with an executed escrow agreement and the rules set forth in this section and §2306.186 Texas Government Code.

(1) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond indenture or tax credit syndication, the Department shall:

(A) Be a required signatory party in all escrow agreements for the maintenance of reserve funds;

(B) Be given notice of any asset management findings or reports, transfer of money in reserve accounts to fund necessary repairs, and any financial data and other information pursuant to the oversight of the Reserve Account within thirty (30) days of any receipt or determination thereof; and

(C) Subordinate its rights and responsibilities under the escrow agreement, including those described in this subsection, to the First Lien Lender or Bank Trustee through a subordination agreement subject to its ability to do so under the law and normal and customary limitations for fraud and other conditions contained in the Department's standard subordination clause agreements as modified from time to time, to include subsection (c) of this section.

(2) The escrow agreement and subordination agreement, if applicable, shall further specify the time and circumstances under which the Department can exercise its rights under the escrow agreement in order to fulfill its obligations under §2306.186 Texas Government Code and as described in this section.

(3) Where the Department is the First Lien Lender and there is no Bank Trustee as a result of a bond indenture or tax credit syndication or where there is no First Lien Lender but the allocation of funds by the Department and §2306.186 Texas Government Code requires that the Department oversee a Reserve Account, the Owner shall provide at their sole expense for appointment of an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Owner due to breach of the escrow agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.

(c) If the Department is not the First Lien Lender with respect to the Development, each Owner receiving Department assistance for multifamily rental housing shall submit on an annual basis within the Department's required Owner's Financial Certification packet a signed certification by the First Lien Lender including:

(1) Reserve for replacement requirements under the first lien loan agreement;

(2) Monitoring standards established by the First Lien Lender to ensure compliance with the established reserve for replacement requirements; and

(3) A statement by the First Lien Lender:

(A) That the Development has met all established reserve for replacement requirements; or

(B) Of the plan of action to bring the Development in compliance with all established reserve for replacement requirements, if necessary.

(d) If the Development meets the minimum unit size described in subsection (a) of this section and the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Owner receiving Department assistance for multifamily rental housing shall set aside the repair reserve amount as described in subsection (e)(1) - (3) of this section through the date described in subsection (f)(2) of this section through the appointment of an escrow agent as further described in subsection (b)(3) of this section.

(e) If the Department is the First Lien Lender with respect to the Development, each Owner receiving Department assistance for multifamily rental housing shall deposit annually into a Reserve Account through the date described in subsection (f)(2) of this section.

(1) For new construction Developments:

(A) Not less than $150 per unit per year for units one (1) to five (5) years old; and

(B) Not less than $200 per unit per year for units six (6) or more years old.

(2) For rehabilitation Developments:

(A) An amount per unit per year established by the Department's division responsible for credit underwriting based on the information presented in a Property Condition Assessment in conformance with §1.36 of this subchapter; and

(B) Not less than $300 per unit per year.

(3) For either new construction or rehabilitation Developments, the Owner of a multifamily rental housing Development shall contract for a third-party Property Condition Assessment meeting the requirements of §1.36 of this subchapter and the Department will reanalyze the annual reserve requirement based on the findings and other support documentation.

(A) A Property Condition Assessment will be conducted:

(i) At appropriate intervals that are consistent with requirements of the First Lien Lender, other than the Department; or

(ii) At least once during each five-year period beginning with the 11th year after the awarding of any financial assistance for the Development by the Department, if the Department is the First Lien Lender or the First Lien Lender does not require a third-party Property Condition Assessment.

(B) Submission by the Owner to the Department will occur within thirty (30) days of completion of the Property Condition Assessment and must include:

(i) The complete Property Condition Assessment;

(ii) First Lien Lender and/or Owner response to the findings of the Property Condition Assessment;

(iii) Documentation of repairs made as a result of the Property Condition Assessment; and

(iv) Documentation of adjustments to the amounts held in the replacement Reserve Account based upon the Property Condition Assessment.

(f) A Land Use Restriction Agreement or restrictive covenant between the Owner and the Department must require:

(1) The Owner to begin making annual deposits to the reserve account on the later of:

(A) The date that occupancy of the Development stabilizes as defined by the First Lien Lender or in the absence of a First Lien Lender other than the Department, the date the property is at least 90% occupied; or

(B) The date that permanent financing for the Development is completely in place as defined by the First Lien Lender or in the absence of a First Lien Lender other than the Department, the date when the permanent loan is executed and funded.

(2) The Owner to continue making deposits until the earliest of the following dates:

(A) The date on which the Owner suffers a total casualty loss with respect to the Development;

(B) The date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(C) The date on which the Development is demolished;

(D) The date on which the Development ceases to be used as a multifamily rental property; or

(E) The later of:

(i) The end of the affordability period specified by the Land Use Restriction Agreement or restrictive covenant; or

(ii) The end of the repayment period of the first lien loan.

(g) The duties of the Owner of a multifamily rental housing Development under this section cease on the date of a change in ownership of the Development; however, the subsequent Owner of the Development is subject to the requirements of this section.

(h) If the Department is the First Lien Lender with respect to the Development or the First Lien Lender does not require establishment of a Reserve Account, the Owner receiving Department assistance for multifamily rental housing shall submit on an annual basis within the Department's required Owner's Financial Certification packet:

(1) Financial statements, audited if available, with clear identification of the replacement Reserve Account balance and all capital improvements to the Development within the fiscal year;

(2) Identification of costs other than capital improvements funded by the replacement Reserve Account; and

(3) Signed statement of cause for:

(A) Use of replacement Reserve Account for expenses other than necessary repairs, including property taxes or insurance;

(B) Deposits to the replacement Reserve Account below the Department's or First Lien Lender's mandatory levels as defined in subsections (c), (d) and (e) of this section; and

(C) Failure to make a required deposit.

(i) If a request for extension or waiver is not approved by the Department, Department action, including a penalty of up to $200 per dwelling unit in the Development and/or characterization of the Development as Materially Non-Compliant, as defined in §60.1 of this title, may be taken when:

(1) A Reserve Account, as described in this section, has not been established for the Development;

(2) The Department is not a party to the escrow agreement for the Reserve Account;

(3) Money in the Reserve Account:

(A) Is used for expenses other than necessary repairs, including property taxes or insurance; or

(B) Falls below mandatory deposit levels;

(4) Owner fails to make a required deposit;

(5) Owner fails to contract for the third party Property Condition Assessment as required under subsection (e)(3) of this section; or

(6) Owner fails to make necessary repairs, as defined in subsection (k) of this section.

(j) On a case by case basis, the Department may determine that the money in the Reserve Account may:

(1) Be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; and

(B) The funds withdrawn from the Reserve Account are replaced as cashflow after payment of expenses, but before payment of return to Owner or developer fee is available;

(2) Fall below mandatory deposit levels without resulting in Department action, if:

(A) Development income after payment of operating expenses, but before payment of return to Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; and

(B) Subsequent deposits to the Reserve Account exceed mandatory deposit levels as cashflow after payment of operating expenses, but before payment of return to Owner or deferred developer fee is available until the Reserve Account has been replenished to the mandatory deposit level less capital expenses to date.

(k) The Department or its agent may make repairs to the Development if the Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by physical inspection. Repairs may be deemed necessary if the Development is notified of the Owner's failure to comply with federal, state and/or local health, safety, or building code.

(1) Payment for necessary repairs must be made directly by the Owner or through a replacement Reserve Account established for the Development under this section.

(2) The Department or its agent will produce a Request for Bids to hire a contractor to complete and oversee necessary repairs.

(l) This section does not apply to a Development for which the Owner is required to maintain a Reserve Account under any other provision of federal or state law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005282
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

CHAPTER 35. 2009 MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§35.1 - 35.10

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 35, §§35.1 - 35.10, concerning the 2009 Multifamily Housing Revenue Bond Rules. The sections are proposed to be repealed in order to enact new sections.

Michael Gerber, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Gerber has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to permit the adoption of new rules for multifamily housing revenue bonds, thereby enhancing the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. The proposed repeal will not impact local employment.

The public comment period will be held between September 24, 2010 to October 23, 2010 to receive input on this repeal and public hearings will be held. More information on the public hearings can be found at http://www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469-9606. ALL COMMENTS MUST BE RECEIVED BY OCTOBER 23, 2010.

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by this proposed repeal.

§35.1. Introduction.
§35.2. Authority.
§35.3. Definitions.
§35.4. Policy Objectives and Eligible Developments.
§35.5. Bond Rating and Investment Letter.
§35.6. Application Procedures, Evaluation and Approval.
§35.7. Regulatory and Land Use Restrictions.
§35.8. Fees.
§35.9. Waiver of Rules.
§35.10. No Discrimination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005271
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

CHAPTER 35. 2011 MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§35.1 - 35.9

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 35, §§35.1 - 35.9, concerning the 2011 Multifamily Housing Revenue Bond Rules. The new sections are proposed in order to implement changes that will improve the 2011 Private Activity Bond Program.

Michael Gerber, Executive Director, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections as proposed.

Mr. Gerber has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be to permit the adoption of new rules for multifamily housing revenue bonds, thereby enhancing the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed. The proposed new sections will not impact local employment.

The public comment period will be held between September 24, 2010 to October 23, 2010 to receive input on these proposed new sections and public hearings will be held. More information on the public hearings can be found at http://www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469-9606. ALL COMMENTS MUST BE RECEIVED BY OCTOBER 23, 2010.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by these proposed new sections.

§35.1. Introduction.

The purpose of this chapter is to state the Texas Department of Housing and Community Affairs (the "Department") requirements for issuing Bonds, the procedures for applying for multifamily housing revenue Bond financing, and the regulatory and land use restrictions imposed upon Developments financed with the issuance of Bonds for the 2011 Private Activity Bond Program year. The rules and provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit Program. Applicants seeking a housing tax credit allocation should consult the Department's Qualified Allocation Plan ("QAP"), in effect for the program year for which the Housing Tax Credit application will be submitted. If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter. The Department encourages the participation in the Multifamily Bond programs by working directly with Applicants, lenders, trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner. The Department has simplified the process, within the limitation of statute, to affirmatively support and create affordable housing throughout the State of Texas.

§35.2. Authority.

The Department receives its authority to issue Bonds from Chapter 2306 of the Texas Government Code. All Bonds issued by the Department must conform to the requirements of the Act. The Department will issue Bonds to finance the rehabilitation, preservation or construction of decent, safe and affordable housing throughout the State of Texas. Eligible Developments may include those which are constructed, acquired, or rehabilitated and which provide housing for individuals and families of Low Income, Very Low Income, or Extremely Low Income, and Families of Moderate Income. Notwithstanding anything herein to the contrary, tax-exempt Bonds which are issued to finance the Development of multifamily rental housing are specifically subject to the requirements of the laws of the State of Texas, including but not limited to Chapter 2306 and Chapter 1372 of the Texas Government Code relating to Private Activity Bonds, and to the requirements of the Code (as defined in this title).

§35.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Texas Government Code, Chapter 2306, §§42, 141 and 145 of the Internal Revenue Code, and §1.1 of this title (relating to Definitions) and repeated in the Tax Credit (Procedures) Manual.

(1) Eligible Tenants--

(A) individuals and families of Extremely Low, Very Low and Low Income;

(B) individuals and families of Moderate Income; or

(C) Persons with Special Needs, in each case, with an Anticipated Annual Income not in excess of 140% of the area median income for a four-person household in the applicable standard metropolitan statistical area; provided that all Low-Income Tenants shall count as Eligible Tenants.

(2) Institutional Buyer--

(A) An accredited investor as defined in Regulation D promulgated under the Securities Act of 1933, as amended (17 CFR §230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)); or

(B) A qualified institutional buyer as defined by 17 CFR §230.144(A), promulgated under the Securities Act of 1935, as amended.

(3) Owner--An Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act.

(4) Persons with Special Needs--Persons who:

(A) Are considered to be disabled under a state or federal law;

(B) Are elderly;

(C) Are designated by the Board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise; or

(D) Are legally responsible for caring for an individual described by subparagraph (A), (B) or (C) of this paragraph and meet the income guidelines established by the Board.

(5) Private Activity Bond Program Scoring Criteria--The scoring criteria established by the Department for the Department's

Multifamily Housing Revenue Bond Program, §35.5(e) of this chapter (relating to Application Procedures, Evaluation and Approval).

(6) Private Activity Bond Program Threshold Requirements--The threshold requirements established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.5(d) of this chapter.

(7) Program--The Department's Multifamily Housing Revenue Bond Program.

(8) Tenant Services--Social services, including child care, transportation, and basic adult education, that are provided to individuals residing in low income housing under Title IV-A, Social Security Act (42 U.S.C. §§601 et seq.), and other similar services.

(9) Tenant Services Program Plan--The plan, subject to approval by the Department, which describes the Tenant Services to be provided by the Development Owner in a Development.

(10) Trustee--A national banking association organized and existing under the laws of the United States, as trustee (together with its successors and assigns and any successor trustee).

§35.4. Bond Rating and Investment Letter.

(a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have and be required to maintain a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, which approval shall be evidenced by adoption by the Board of a resolution authorizing the issuance of the credit-enhanced Bonds. Remedies relating to failure to maintain appropriate credit ratings shall be provided in the financing documents relating to the Development.

(b) Investment Letters. Bonds rated less than "A," or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investment letter acceptable to the Department. Subsequent purchasers of such Bonds shall also be qualified as Institutional Buyers and shall sign and deliver to the Department an investment letter in a form acceptable to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars ($100,000), and shall carry a legend requiring any purchasers of the Bonds to sign and deliver to the Department an investment letter in a form acceptable to the Department.

§35.5. Application Procedures, Evaluation and Approval.

(a) Application Costs, Costs of Issuance, Responsibility and Disclaimer. The Applicant shall pay all costs associated with the preparation and submission of the Pre-application--including costs associated with the publication and posting of required public notices--and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the Application process, the Applicant is solely responsible for determining whether to proceed with the Application, and the Department disclaims any and all responsibility and liability in this regard.

(b) Pre-application. An Applicant who requests financing from the Department for a Development shall submit a pre-application in the format prescribed by the Department. Within fourteen (14) days of the Department's receipt of the pre-application, the Department will be responsible for federal, state, and local community notifications of the proposed Development. Upon review of the pre-application, if the Development is determined to be ineligible for Bond financing by the Department pursuant to §49.4 of this title (relating to Ineligible Applicants, Applications and Developments), the Department will send a letter to the Applicant explaining the reason for the ineligibility. If the Development is determined to be eligible for Bond financing by the Department, the Department will score and rank the pre-application based on the Private Activity Bond Program Scoring Criteria as described in subsection (e) of this section.

(1) The Department will rank the pre-application with higher scores ranking higher within each priority defined by §1372.0321, Texas Government Code. All Priority 1 Applications will be ranked above all Priority 2 Applications which will be ranked above all Priority 3 Applications, regardless of score, reflecting a priority structure which gives consideration to the income levels of the tenants and the rent levels of the units consistent with §2306.359, Texas Government Code. This priority ranking will be used throughout the calendar year. In the event two or more Applications receive the same score, the Department will use, as a tie-breaking mechanism, a priority first for Applications involving rehabilitation; then if a tie still exists, the Application with the greatest number of points awarded for Quality and Amenities for the Development; then if a tie still exists, the Department will grant preference to the pre-application with the lower number of net rentable square feet per bond amount requested. Pre-Applications must meet the threshold requirements as stated in the Private Activity Bond Program Threshold Requirements as set out in subsection (d) of this section.

(2) After scoring and ranking, the Development and the proposed financing structure will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development.

(c) Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff, for good cause, may recommend that the Board not approve an inducement resolution for an Application. Because each Development is unique, making the final determination is often dependent on the issues presented at the time the full Application is presented to the Board.

(d) Pre-Application Threshold Requirements.

(1) As the Department reviews the Application, the Department will use the assumptions as reflected in §1.32 of this title (relating to Underwriting Rules and Guidelines), even if not reflected by the Applicant in the Application.

(A) Construction Costs Per Unit Assumption. Costs not to exceed $85 per square foot for general population developments and $95 for elderly developments (Rehabilitation developments are exempt from this requirement);

(B) Anticipated Interest Rate and Term. As stated in the Summary of Financing Participants in the pre-application;

(C) Size of Units as reflected in §49.8(5)(B) of this title (relating to Threshold Criteria).

(2) Zoning. Evidence of appropriate zoning must be provided as referenced in §49.8(8)(B) of this title.

(3) Proper Site Control. Properly executed and escrow receipted Site Control in the name of the Applicant (principal or member of the General Partner) valid through the inducement Board meeting at pre-application and ninety (90) days from the date of the Certificate of

Reservation with the option to extend through the scheduled TDHCA Board meeting at full application. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting.

(4) Current Market Information (must support affordable rents).

(5) Completed current TDHCA Bond Pre-Application.

(6) Completed 2011 Bond Review Board Residential Rental Attachment.

(7) Evidence of paid Application Fees ($1,000 to TDHCA, $2,000 to Vinson and Elkins, as the Department's bond counsel, and $5,000 to Bond Review Board).

(8) Boundary Survey or Plat clearly identifying the location and boundaries of the subject property.

(9) Local Area map showing the location of the Property and Community Services/Amenities within a three (3) mile radius (radius ring or scale must be present on the map).

(10) Organization Chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant with evidence of Entity Registration or Reservation with the Office of the Secretary of State.

(11) Required Notification. Evidence of notification is required in the form provided in the pre-application. The "Public Information Form" must be completed and include a list of all of the recipients (including names and complete addresses). Proof of delivery, though not required to be submitted with the Application, must not be older than three months prior to the date of Application submission date. Notification must be sent to all the following individuals and entities (if the QAP in effect for the program year for which the Bond and Housing Tax Credit applications are submitted reflect a notification process that is different from the process listed in subparagraphs (A) - (G) of this paragraph, then the QAP will override the notification process listed in subparagraphs (A) - (G) of this paragraph):

(A) State Senator and Representative that represents the district containing the development;

(B) Presiding Officer of the governing body of any municipality containing the development and all elected members of that body (Mayor, City Council members);

(C) Presiding Officer of the governing body of the county containing the development and all elected members of that body (County Judge and/or Commissioners);

(D) School District Superintendent of the school district containing the development;

(E) Presiding Officer of the School Board of Trustees of the school district containing the development; and

(F) The Applicant must request Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as follows:

(i) No later than fourteen (14) days prior to the date the Pre-application is submitted, the Applicant must e-mail, fax or mail with registered receipt a completed, "Neighborhood Organization Request" letter as provided in the Pre-application materials to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (the "ETJ") of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

(ii) If no reply letter is received from the local elected officials by seven (7) days prior to the Pre-application submission, then the Applicant must certify to that fact in the Pre-application materials; and

(iii) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the Pre-Application submission in the "Certification of Notification Form" provided in the Pre-application.

(G) No later than the date the Pre-application is submitted, Notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt (email or fax to be "receipt confirmed") in the format required in the "Pre-application Notification Template" provided in the Pre-Application materials. Developments located in an ETJ of a city are not required to notify city officials; however the county officials are required to be notified. It is strongly encouraged that Applicants retain proof of delivery of the notifications to the persons or entities prescribed in clauses (i) - (ix) of this subparagraph in the event the Department requires proof of Notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the Pre-Application is submitted.

(i) Neighborhood Organizations on record with the state or county whose boundaries contain the proposed Development Site as identified in subparagraph (F)(iii) of this paragraph;

(ii) Superintendent of the school district containing the Development;

(iii) Presiding officer of the board of trustees of the school district containing the Development;

(iv) Mayor of any municipality containing the Development;

(v) All elected members of the governing body of any municipality containing the Development;

(vi) Presiding officer of the governing body of the county containing the Development;

(vii) All elected members of the governing body of the county containing the Development;

(viii) State representative of the district containing the Development; and

(ix) State senator of the district containing the Development.

(H) Each such notice must include, at a minimum, all of the following:

(i) The Applicant's name, address, individual contact name and phone number;

(ii) The Development name, address, city and county;

(iii) A statement informing the entity or individual being notified that the Applicant is submitting a request for Private Activity Bonds and Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(iv) Statement of whether the Development proposes New Construction or Rehabilitation;

(v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.) and population being served (general, or elderly);

(vi) The approximate total number of Units and approximate total number of low-income Units;

(vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the percentage of Units that are market rate;

(viii) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur; and

(ix) The expected completion date if credits and/or bonds are awarded.

(e) Pre-application Scoring Criteria.

(1) Income and Rent Levels of the Tenants: Applications submitted as a Priority 1 will receive 10 points, Priority 2 will receive 7 points and Priority 3 will receive 5 points.

(2) Cost of the Development by Square Foot: for this item, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of Net Rentable Area (NRA). Costs must be greater than or equal to $85 per square foot for general population Developments and $95 per square foot for elderly Developments (1 point) (Rehabilitations will automatically receive (1 point)).

(3) Size of Units: The average size of all Units combined in the Development must be greater than or equal to 950 square foot for general and must be greater than or equal to 750 square foot for elderly (5 points). (Rehabilitations will automatically receive 5 points).

(4) Period of Guaranteed Affordability for Low Income Tenants: Add ten (10) years of affordability after the extended use period for a total affordability period of forty (40) years (1 point).

(5) Quality of the Units as referenced in §49.9(a)(4)(B) of this title (relating to Selection Criteria).

(6) Common Amenities as referenced in §49.8(5)(A)(ii) of this title.

(7) Tenant Services. (Tenant Services shall include only direct costs (tenant services contract amount, supplies for services, internet connections, initial cost of computer equipment, etc.). Indirect costs such as overhead and utility allocations may not be included);

(A) $10 per Unit per month (10 points);

(B) $7 per Unit per month (5 points);

(C) $4 per Unit per month (3 points).

(8) Development Support/Opposition. Maximum net points of +24 to -24. Each letter will receive a maximum of +3 to -3. All letters received by 5:00 PM, seven (7) business days prior to the date of the Board meeting at which the Application will be considered for Applications submitted for waiting list and carryforward will be used in scoring. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials to be considered are those in office at the time the Application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points under this exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. A letter that does not directly express support by expresses it indirectly by inference, (i.e. a letter that says "the local jurisdiction supports the Development and I support the local jurisdiction" will be treated as a neutral letter).

(A) Texas State Senator and Texas State Representative (maximum +3 to -3 points per official);

(B) Presiding officer of the governing body of any municipality containing the Development and the elected district member of the governing body of the municipality containing the Development (maximum +3 to -3 points per official);

(C) Presiding officer of the governing body of the county containing the Development and the elected district member of the governing body of the county containing the Development (if the site is not in a municipality, these points will be doubled) (maximum +3 to -3 points per official);

(D) Local School District Superintendent and Presiding Officer of the Board of Trustees for the School district containing the Development (maximum +3 to -3 points per official).

(9) Proximity to Community Services/Amenities Community services/amenities within three (3) miles of the site. A map must be included identifying the Development Site and the location of services by name. If the services are not identified by name, points will not be awarded. All services must exist or, if under active construction post pad, by the date pre-application is submitted. The map must include either a three (3) mile radius ring or a scale. (Rehabilitation developments will receive 1.5 points for each item in subparagraphs (A) - (N) of this paragraph.)

(A) Full service grocery store or supermarket (1 point);

(B) Pharmacy (1 point);

(C) Convenience store/mini-market (1 point);

(D) Department or Retail Merchandise Store (1 point);

(E) Bank/Credit Union (1 point);

(F) Restaurant (including fast food) (1 point);

(G) Indoor public recreation facilities, such as civic centers, community centers, and libraries, (1 point);

(H) Outdoor public recreation facilities, such as parks, golf courses, and swimming pools, (1 point);

(I) Fire/Police Station (1 point);

(J) Hospital/medical clinic (1 point);

(K) Medical offices (physician, dentistry, optometry) (1 point);

(L) Public Transportation (1/2 mile from site) (1 point);

(M) Public School (only one school required for point and only eligible with general population developments) (1 point);

(N) Senior Center (1 point);

(10) Rehabilitation Developments will receive 30 points. This will include the demolition of old buildings and New Construction of the same number of units if allowed by local codes or less units to comply with local codes (not to exceed 252 total units).

(11) Preservation Developments will receive 10 points. This includes Rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past ten (10) years. Evidence must be provided.

(12) Declared Disaster Areas. Applications will receive 7 points, if at the time the complete pre-application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in a declared Disaster Area. This includes federal, state and Governor declared disaster areas.

(13) Developments in Census Tracts with No Other Existing Developments Supported by Tax Credits. Applications will receive 6 points if the proposed Development is located in a census tract in which there are no other existing Developments that were awarded housing tax credits in the last five (5) years and 3 points if there are no other existing developments that were awarded housing tax credits in the last three (3) years. The applicant must provide evidence of the census tract in which the Development is located. These Census Tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.

(14) Notary Public Services for Tenants. Applications will receive 1 point for this item. (§2306.6710(b)(3)) To receive this point, the Applicant must submit a certification that the Development will provide notary public services to the tenants during regular business hours at no cost to the tenant. This provision will be included in the Land Use Restriction Agreement and Regulatory Agreement.

(f) Multiple Site Applications. For the purposes of scoring, applicants must submit the required information as outlined in the Pre-Application Submission Manual. Each individual property will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(g) Financing Commitments. After approval by the Board of the inducement resolution, and as part of the submission of a final application, the Applicant will be solely responsible for making appropriate arrangements with financial institutions which are to be involved with the issuance of the Bonds or the financing of the Development, and to begin the process of obtaining firm commitments for financing from each of the financial institutions involved.

(h) Full Application. An Applicant who elects to proceed with submitting a final Application to the Department must submit the Volumes I and II of the Application, for Priority 1 and 2, prior to receipt of a Certificate of Reservation of allocation from the Texas Bond Review Board. For Priority 3 Applications the Volumes I and II must be submitted within fourteen (14) days of the Certificate of Reservation date from the Texas Bond Review Board. The Volume III of the Application and such supporting material as is required by the Department must be submitted at least sixty (60) days prior to the scheduled meeting of the Board at which the Development and the Bond issuance are to be considered, unless the Department directs the Applicant otherwise in writing. If the Applicant is applying for other Department funding then refer to the Rules for that program for Application submission requirements. The full Application must adhere to the Department's QAP in effect for the program year for which the Bond and Housing Tax Credit applications are submitted. The Department may determine that supporting materials listed in the full Application shall be provided subsequent to the final Application deadline in accordance with a schedule approved by the Department. Failure to provide any supporting materials in accordance with the approved schedule may be grounds for terminating the Application and returning the reservation to the Texas Bond Review Board.

(1) A Public Notification Sign shall be installed on the proposed Development site, regardless of Priority as described in §49.8(9)(B) of this title.

(2) Completed Uniform Application and Multifamily Rental Worksheets in the format required by the Department as posted to the Department's website.

(i) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies as described in §49.7(a)(2)(B) of this title (relating to Application Process).

(j) Eligibility Criteria. The Department, in addition to those items described in §49.4 of this title, will evaluate the Development for eligibility at the time of pre-application, and at the time of full Application. If there are changes to the Application that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the Certificate of Reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the conditions set out in paragraphs (1) and (2) of this subsection in order for a Development to be considered eligible:

(1) The proposed Development must further meet the public purposes of the Department as identified in the Code.

(2) An application may include either the rehabilitation or new construction, or both the rehabilitation and new construction, of qualified residential rental facilities located at multiple sites and with respect to which 51% or more of the residential units are located:

(A) in a county with a population of less than 75,000; or

(B) in a county in which the median income is less than the median income for the state, provided that the units are located in that portion of the county that is not included in a metropolitan statistical area containing one or more projects that are proposed to be financed, in whole or in part, by an issuance of bonds. The number of sites may be reduced as needed without affecting their status as a project for purposes of the application, provided that the final application for a reservation contains at least two sites. (§1372.002, Texas Government Code)

(k) Bond Documents. After receipt of the final Application, bond counsel for the Department shall draft Bond documents which conform to the state and federal laws and regulations which apply to the transaction.

(l) Public Hearings; Board Decisions. For every Bond issuance, the Department will hold a public hearing in accordance with §147(f) of the Code, in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development team must be present and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should

contain at a minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is a Rehabilitation then the presentation should include the scope of work that will be done to the property. All handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant. The Board's decisions on approvals of proposed Developments will consider all relevant matters. Any topics or matters, alone or in combination, may or may not determine the Board's decision. The Department's Board will consider the following topics in relation to the approval of a proposed Development:

(1) The Developer market study;

(2) The location;

(3) The compliance history of the Developer;

(4) The financial feasibility;

(5) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;

(6) The Development's proximity to other low-income housing Developments;

(7) The availability of adequate public facilities and services;

(8) The anticipated impact on local school districts;

(9) Zoning and other land use considerations;

(10) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and

(11) Other good cause as found by the Board.

(m) Approval of the Bonds.

(1) Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by the Department's staff, will consider the approval of the Bond issuance, final Bond documents and in the instance of privately placed Bonds, the pricing of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 and §1.8 of this title. To the extent applicable to each specific bond issuance, the Department's conduit housing transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to the Texas Bond Review Board rules) and Chapter 1372, Texas Government Code. The Bond issuance must receive an approving opinion from the Department's bond counsel with respect to the legality and validity of the Bonds and the security therefore, and in the case of tax-exempt Bonds, with respect to the excludability from gross income for federal income tax purposes of interest on the Bonds.

(2) Alternative Dispute Resolution Policy. The Department encourages use of Alternative Dispute Resolution methods as outlined in §1.17 of this title.

(n) Local Permits. Prior to the closing of the Bonds, all necessary approvals, including building permits, from local municipalities, counties, or other jurisdictions with authority over the Development must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be provided to the Department.

(o) Closing. If there are changes to the Application prior to closing that have an adverse effect on the score and ranking order that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). Once all approvals have been obtained including final approval by the Board and Bond documents have been finalized to the respective parties' satisfaction, the Bond transaction will close. Any outstanding Housing Trust Fund Pre-Development loans for the proposed Development site must be paid in full at the time the bond transaction is closed. All Applicants are subject to §1.20(g) of this title (relating to Asset Resolution and Enforcement). Upon satisfaction of all conditions precedent to closing, the Department will issue Bonds in exchange for payment thereof. The Department will then loan the proceeds of the Bonds to the Applicant and disbursements of the proceeds may begin.

§35.6. Regulatory and Land Use Restrictions.

(a) Filing and Term of LURA. A Regulatory and Land Use Restriction Agreement or other similar instrument (the "LURA"), will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The term of the LURA will be the longer of thirty (30) years, from the date the Development Owner takes legal possession of the Development or until the end of the remaining term of the existing federal government assistance pursuant to §2306.185.

(b) Development Occupancy. The LURA will specify occupancy restrictions for each Development based on the income of its tenants, and will restrict the rents that may be charged for Units occupied by tenants who satisfy the specified income requirements. Pursuant to §2306.269, Texas Government Code, the LURA will prohibit a Development Owner from excluding an individual or family from admission to the Development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (the "Housing Act"), and from using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than two and one half (2.5) times the individual's or family's share of the total monthly rent payable to the Development Owner. Development occupancy requirements must be met on or prior to the date on which Bonds are issued unless the Development is under construction. Adequate substantiation that the occupancy requirements have been met, in the sole discretion of the Department, must be provided prior to closing. Occupancy requirements exclude Units for managers and maintenance personnel that are reasonably required by the Development.

(c) Set Asides.

(1) Developments which are financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified §501(c)(3) Bonds must be restricted under one of the following two minimum set-asides:

(A) at least 20% of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50% of the area median income; or

(B) at least 40% of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60% of the area median income.

(2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with §1372.0321, Texas Government Code. Units intended

to satisfy set-aside requirements must be distributed evenly throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit; provided, however, that, should a tenant's income, as of the most recent determination thereof, exceed 140% of the then applicable income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant (Required federal set-aside requirements).

(d) Global Income Requirement. All of the Units that are available for occupancy in Developments financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified §501(c)(3) Bonds shall be occupied or held vacant (in the case of new construction) and available for occupancy at all times by persons or families whose income does not exceed 140% of the area median income for a four-person household.

(e) Qualified §501(c)(3) Bonds. Developments which are financed from the proceeds of Qualified §501(c)(3) Bonds are further subject to the restriction that at least 75% of the Units within the Development that are available for occupancy shall be occupied (or, in the case of new construction, held vacant and available for occupancy until such time as initial lease-up is complete) at all times by individuals and families of Low Income (less than or equal to 80% of AMFI).

(f) Taxable Bonds. The occupancy requirements for Developments financed from the issuance of taxable Bonds will be negotiated, considered and approved by the Department on a case by case basis.

(g) Fair Housing. All Developments financed by the Department must comply with the Fair Housing Act which prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.

(h) Tenant Services. Acceptable services include those found in §49.9(a)(9) of this title (relating to Selection Criteria).

§35.7. Fees.

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, the following fees: $1,000 (payable to TDHCA), $2,000 (payable to Vinson & Elkins, the Department's bond counsel) and $5,000 (payable to the Texas Bond Review Board (BRB)). These fees cover the costs of pre-application review and filing fees to the BRB. The Department shall set fees to be paid by the Applicant in order to cover the costs of pre-application review, Application and Development review, the Department's expenses in connection with providing financing for a Development, and as required by law. (§1372.006(a), Texas Government Code).

(b) Application and Issuance Fees. At the time of full application the Applicant is required to submit a tax credit application fee of $30/unit and $10,000 for the bond application fee (for multiple site Applications $10,000 or $30/unit, whichever is greater, for the bond application fee.) At the closing of the bonds the following fees are required: an issuance fee equal to 50 basis points (0.005) of the issued bond amount, administration fee equal to 20 basis points (0.002) and a Private Activity Bond compliance fee equal to $25/unit and a tax credit compliance fee equal to $40/unit. For refunding Applications the Application fee will be $10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be $5,000.

(c) Annual Administration, Portfolio Management and Compliance, and Asset Management Fees. The Department shall set ongoing fees to be paid by Development Owners to cover the Department's costs of administering the Bonds, portfolio management and compliance with the program requirements applicable to each Development and asset management applicable requirements.

(1) Administration. The annual administration fee is paid in arrears and is equal to 10 basis points (0.001) of the outstanding bond amount beginning three years from the closing date. These fees are paid as long as the bonds are outstanding.

(2) Compliance Monitoring Fees. The annual tax credit compliance fee is paid in advance (for the duration of the compliance or affordability period) and is equal to $40/unit beginning two years from the closing date on the bonds. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. The Private Activity Bond compliance fee is paid in advance at closing (for as long as the bonds are outstanding) and is equal to $25/unit beginning two years from the closing date on the bonds for payment to be applied to the third year following closing. Compliance monitoring fees may be adjusted from time to time by the Department.

(3) Asset Management. The asset management fee is paid in advance and is equal to $25/unit beginning two years from the closing date on the bonds. This fee is based on voluntary participation in the asset management program. Those who elect to participate are encouraged to contact the Texas State Affordable Housing Corporation (TSAHC) for information on billing and services offered.

§35.8. Waiver of Rules.

Provided all requirements of the Act, the Code, and any other applicable law are met, the Board may waive any one or more of the Rules set forth in this chapter relating to the Multifamily Housing Revenue Bond Program in order to further the purposes and the policies of Chapter 2306, Texas Government Code; to encourage the acquisition, construction, reconstruction, or rehabilitation of a Development that would provide decent, safe, and sanitary housing, including, but not limited to, providing such housing in economically depressed or blighted areas, or providing housing designed and equipped for Persons with Special Needs; or for other good cause, as determined by the Board.

§35.9. No Discrimination.

The Department and its staff or agents, Applicants, Development Owners, and any participants in the Program shall not discriminate under this Program against any person or family on the basis of race, creed, national origin, age, religion, handicap, family status, or sex, or against persons or families on the basis of their having minor children, except that nothing herein shall be deemed to preclude a Development Owner from selecting tenants with Special Needs, or to preclude a Development Owner from selecting tenants based on income in renting Units to comply with the set asides under the provisions of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005272
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

CHAPTER 49. 2009 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §§49.1 - 49.23

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 49, §§49.1 - 49.23, concerning the 2009 Housing Tax Credit Program Qualified Allocation Plan and Rules. The sections are proposed to be repealed in order to enact new sections.

Michael Gerber, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Gerber has also determined that for each year of the first five-years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. The proposed repeal will not impact local employment.

The public comment period will be held between September 24, 2010 to October 23, 2010 to receive input on this repeal and public hearings will be held. More information on the public hearings can be found at http://www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469-9606. ALL COMMENTS MUST BE RECEIVED BY OCTOBER 23, 2010.

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by this proposed repeal.

§49.1. Purpose and Authority; Program Statement; Allocation Goals.

§49.2. Coordination with Rural Agencies.

§49.3. Definitions.

§49.4. State Housing Credit Ceiling.

§49.5. Ineligibility; Disqualification and Debarment; Certain Applicant and Development Standards; Representation by Former Board Member or Other Person; Due Diligence, Sworn Affidavit; Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment.

§49.6. Site and Development Restrictions: Floodplain; Ineligible Building Types; Scattered Site Limitations; Credit Amount; Limitations on the Size of Developments; Limitations on Rehabilitation Costs; Unacceptable Sites; Appeals and Administrative Deficiencies for Site and Development Restrictions.

§49.7. Regional Allocation Formula; Set-Asides; Redistribution of Credits.

§49.8. Pre-Applications for Competitive Housing Tax Credits: Submission; Communication with Departments Staff; Evaluation Process; Threshold Criteria and Review; Results (§2306.6704).

§49.9. Application: Submission; Ex Parte Communications; Adherence to Obligations; Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling; Evaluation Process for Tax-Exempt Bond Development Applications; Evaluation Process for Rural Rescue Applications Under the 2010 Credit Ceiling; Experience Pre-Certification Procedures; Threshold Criteria; Selection Criteria; Tiebreaker Factors; Staff Recommendations

§49.10. Board Decisions; Waiting List; Forward Commitments.

§49.11. Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants; Viewing of Pre-Applications and Applications; Confidential Information.

§49.12. Tax-Exempt Bond Developments: Filing of Applications; Applicability of Rules; Supportive Services; Financial Feasibility Evaluation; Satisfaction of Requirements.

§49.13. Commitment and Determination Notices; Agreement and Election Statement; Documentation Submission Requirements.

§49.14. Carryover; 10% Test; Commencement of Substantial Construction.

§49.15. LURA, Cost Certification.

§49.16. Housing Credit Allocations.

§49.17. Board Reevaluation, Appeals Process; Provision of Information or Challenges Regarding Applications; Amendments; Housing Tax Credit and Ownership Transfers; Sale of Tax Credit Properties; Withdrawals; Cancellations; Alternative Dispute Resolution.

§49.18. Compliance Monitoring and Material Noncompliance.

§49.19. Department Records; Application Log; IRS Filings.

§49.20. Program Fees; Refunds; Public Information Requests; Adjustments of Fees and Notification of Fees; Extensions; Penalties.

§49.21. Manner and Place of Filing All Required Documentation.

§49.22. Waiver and Amendment of Rules.

§49.23. Deadlines for Allocation of Housing Tax Credits (§2306.6724).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005288
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

CHAPTER 49. 2011 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §§49.1 - 49.17

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 49, §§49.1 - 49.17, concerning the 2011 Housing Tax Credit Program Qualified Allocation Plan and Rules. The new sections are proposed in order to implement changes that will improve the 2011 Housing Tax Credit Program.

Michael Gerber, Executive Director, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections as proposed.

Mr. Gerber has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be enhanced compliance with formalized policy, all contractual and statutory requirements. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed. The proposed new sections will not impact local employment.

The public comment period will be held between September 24, 2010 to October 23, 2010 to receive input on these proposed new sections and public hearings will be held. More information on the public hearings can be found at http.//www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address. tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469-9606. ALL COMMENTS MUST BE RECEIVED BY OCTOBER 23, 2010.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by these proposed new sections.

§49.1. General Program Information.

(a) Purpose and Authority. The rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits authorized by applicable federal income tax laws. Pursuant to Chapter 2306, Subchapter DD, of the Texas Government Code, the Department is authorized to make Housing Tax Credit Allocations for the State of Texas. As required by §42(m)(1) of the Code, the Department developed this Qualified Allocation Plan (QAP) which is set forth in §§49.1 - 49.17 of this chapter. Sections in this chapter establish procedures for applying for and obtaining an allocation of Housing Tax Credits, along with ensuring that the proper Threshold Criteria, Selection Criteria, priorities and preferences are followed in making such allocations.

(b) Allocation Goals. It is the policy of this Department and the Board, as expressed through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state, and in accordance with the regional allocation formula to promote maximum utilization of the available tax credit amount and to allocate credits among as many different entities as practicable without diminishing the quality of the housing that is being built.

§49.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Texas Government Code, Chapter 2306, §42 of the Internal Revenue Code, §1.1 of this title (relating to Definitions), and repeated in the Tax Credit (Procedures) Manual.

(1) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development (New Construction, Reconstruction, and/or Rehabilitation), as described in §42(b) of the Code. However, where the property has not placed in service or an Agreement and Election Statement has not been executed the Applicable Percentage must be estimated as of the date of the Application submission. For purposes of the Application, the Applicable Percentage must be projected at:

(A) not less than 9% through December 31, 2013 for 70% present value credits unless extended by Congress; or

(B) fifteen (15) basis points over the current Applicable Percentage for 30% present value credits associated with acquisition and with qualified Tax-Exempt Bond Developments, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(2) Application Acceptance Period--That period of time during which Applications may be submitted to the Department.

(3) Area Median Gross Income (AMGI)--Area median gross household income, as determined for all purposes under and in accordance with the requirements of §42 of the Code.

(4) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of §42(h)(1)(C) of the Code and Treasury Regulations, §1.42-6.

(5) Carryover Allocation Document--A document issued by the Department, and executed by the Development Owner, pursuant to §49.12(e) of this chapter (relating to Carryover).

(6) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(7) Certificate of Reservation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(8) Community Revitalization Plan--A published document under any name, approved and adopted by the local Governing Body or, if the Governing Body has lawfully assigned responsibility for oversight of communication or activities to a body created or sponsored by that Governing Body, the vote of the Governing Body so designated, by ordinance, resolution, or vote that targets specific geographic areas for revitalization and development of residential developments.

(9) Competitive Housing Tax Credits--Tax credits available from the State Housing Credit Ceiling.

(10) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.

(11) Development Site--The area, or if scattered site, areas, on which the Development is proposed to be located.

(12) Economically Distressed Area--A county that contains an area that meets the criteria for an economically distressed area under §17.92(1), Texas Water Code, and has adopted and enforces the model rules under §16.343, Texas Water Code.

(13) Eligible Basis--With respect to a building within a Development, the building's Eligible Basis pursuant to §42(d) of the Code.

(14) Existing Residential Development--Any Development Site which contains existing residential Units at the time the Application is submitted to the Department.

(15) Housing Credit Allocation--An allocation by the Department to a Development Owner for a specific Application of Housing Tax Credits in accordance with the provisions of this chapter.

(16) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period which the Board allocates to the Development.

(17) Qualified Nonprofit Organization--An organization that meets the requirements of Texas Government Code §2306.6706 and §2306.6729.

(18) Qualified Nonprofit Development--A Development in which a Qualified Nonprofit Organization is to own an interest in the Development directly or through a partnership and materially participates (within the meaning of §469(h) of the Code) in the development and operation of the development throughout the Compliance Period.

(19) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code.

(20) Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living.

(21) Tax Credit (Procedures) Manual--The manual produced and amended from time to time by the Department which reiterates the rules and provides guidance for the filing of tax credit related documents.

(22) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(23) Transit Oriented District--A mixed-use residential and commercial area, located within a radius of one-quarter mile from an existing or proposed transit stop, designed to encourage pedestrian activities and maximize access to public transportation.

§49.3. Program Calendar.

All documentation noted in Figure: 10 TAC §49.3 must be submitted to the Department offices located at 221 E. 11th Street, Austin, 78701, by 5:00 p.m. (CST) by the date indicated.
Figure: 10 TAC §49.3

§49.4. Ineligible Applicants, Applications and Developments.

(a) Ineligible Applicants. An Applicant is ineligible if any Applicant, Development Owner, Developer or Guarantor involved with the Application:

(1) has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or (§2306.6721(c)(2))

(2) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application deadline; or

(3) at the time of Application is subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; is subject to a federal tax lien; or is the subject of an enforcement proceeding with any Governmental Entity; or

(4) has any past due audits and has not submitted those past due audits to the Department in a satisfactory format. A Person is not eligible to receive a Commitment of Housing Tax Credits from the Department if any audit finding or questioned or disallowed cost is unresolved as of June 1 of each year, or for Tax-Exempt Bond Developments or other Applications applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than thirty (30) days after Volume III of the Application is submitted; or (§2306.6703(a)(1))

(5) At the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been:

(A) A member of the Board; or

(B) The Executive Director, a Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Portfolio Management and Compliance, the Director of Real Estate Analysis, or a manager over Housing Tax Credits employed by the Department; (§2306.6703(a)(2))

(6) The Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless:

(A) The Applicant proposes to maintain for a period of thirty (30) years or more 100% of the Development Units supported by Housing Tax Credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50% of the Area Median Gross Income, adjusted for family size; and

(B) At least one-third of all the Units in the Development are public housing units or Section 8 Development-based Units; or

(C) The applicable private activity bonds will be redeemed only in an amount consistent with their proportionate amortization; or

(D) If the redemption of the applicable private activity bonds will occur in the first five years of the operation of the Development and complies with §429(h)(4), Internal Revenue Code of 1986:

(i) on the date the Certificate of Reservation is issued, the Texas Bond Review Board determines that there is not a waiting list for private activity bonds in the same priority level established under §1372.0321 of the Texas Government Code or, if applicable, in the same uniform state service region, as referenced in §1372.0231,

Texas Government Code, that is served by the proposed Development; and

(ii) the applicable private activity bonds will be redeemed according to underwriting, if any, established by the Department; (§2306.6703)

(7) The Development Owner has contracted, or will contract for the proposed Development with, a Developer that:

(A) Is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development;

(B) Has breached a contract with a public agency and failed to cure that breach; or

(C) Misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency and the amount of financial assistance awarded to the Developer by the agency;

(8) There is, involving the Application or Applicant, a violation of §2306.6733 of the Texas Government Code;

(9) If the Developer or Principal of the Applicant has been voluntarily or involuntarily removed by a lender, equity provider, or any other owners or investors, however designated, or any combination thereof or if any litigation to effectuate such removal is instituted, the Department shall be promptly notified by the Applicant. The Applicant will provide the Department staff with such information as it may reasonably request to evaluate the facts and circumstances surrounding such actual or threatened removal and prepare a report to the Executive Director. The information considered and addressed in the report will include, but not be limited to those identified in subparagraphs (A) - (C) of this paragraph. The Executive Director will make a determination, based on the report, whether facts and circumstances are present that would support the institution of formal debarment proceedings. Any debarment under this provision shall be for a period that will not exceed five (5) years. No person shall be debarred except by formal action taken by the Department's Governing Board.

(A) Whether the Developer or Principal has invested more of its financial resources in the Development than it has received from or in connection with the Development;

(B) Whether such Developer or Principal had the ability to address the facts and circumstances that ultimately led to actual or threatened removal by other means or whether uncooperative parties or other facts and circumstances beyond its control prevented any other such resolution; and

(C) The contributing or causative effect of circumstances beyond such Developer's or Principal's control, such as significant changes in market conditions.

(b) Ineligible Applications. The Department will terminate an Application, and may debar a Person, if it is determined by the Department that any issues identified in the paragraphs of this subsection exist. The Department may debar a Person for one (1) year from the date of debarment, or until the violation causing the debarment has been remedied, whichever term is longer, if the Department determines the facts warrant it. Causes for disqualification and debarment include: (§2306.6721)

(1) The provision of fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation in the Application or other information submitted to the Department at any stage of the evaluation or approval process; or

(2) The Applicant, Development Owner, Developer or Guarantor or anyone that has Controlling ownership interest in the Development Owner, Developer, or Guarantor, or any Affiliate that Controls one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the LURA or if such Material Noncompliance is identified during the Application review or the program rules in effect for such property as further described in Chapter 60 of this title (relating to Compliance Administration); or (§2306.6721(c)(3))

(3) The Applicant, Development Owner, Developer, or any Guarantor, anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor, or any Affiliate of such entity that is active in the ownership or Control has been a Principal of any entity that failed to make all loan payments to the Department in accordance with the terms of the loan, as amended, or was otherwise in default with any provisions of any loans from the Department; or

(4) The Applicant or the Development Owner that is active in the ownership or Control of one or more tax credit properties in the state of Texas has failed to cure any fees described in §49.14 of this chapter (relating to Program Related Fees) seven (7) days prior to the Board meeting at which the decision for the Application is to be made; or

(5) An Applicant or a Related Party and any Person who is active in the construction, Rehabilitation, ownership, or Control of the proposed Development, including a General Partner or contractor, and a Principal or Affiliate of a General Partner or contractor, or an individual employed as a consultant, lobbyist or attorney by an Applicant or a Related Party, violates §2306.1113 relating to Ex Parte Communication as further described in §49.7 of this chapter (relating to Application Process); or

(6) It is determined by the Department's Executive Director that there is evidence that establishes probable cause to believe that an Applicant, Development Owner, Developer, or any of their employees or agents has violated a state revolving door or other standard of conduct or conflict of interest statute, including §2306.6733, Texas Government Code, or a section of Chapter 572, Texas Government Code, in making, advancing, or supporting the Application; or

(7) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose previous funding contracts or commitments have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application and through the date of final allocation due to a failure to meet contractual obligations; or

(8) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose pre-development award of non-tax credit funds from the Department has not been repaid for the Development at the time of Carryover Allocation or Bond closing; or

(9) The Application is submitted after the Application submission deadline (time or date); includes an electronic submission that is unreadable by the Department's computer system; has an entire Volume of the Application missing; or has a Material Deficiency as defined under §1.1 of this title (relating to Definitions). If an Application is determined ineligible pursuant to this subsection, the Application will be terminated without further consideration and the Applicant will be notified of such termination. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant; or

(10) In exercising due diligence in considering information of possible ineligibility, possible grounds for disqualification and debarment, Applicant and Development standards, possible improper representation or compensation, or similar matters, the Department may request a sworn affidavit or affidavits from the Applicant, Development Owner, Developer, Guarantor, or other Persons addressing the matter. If an affidavit determined to be sufficient by the Department is not received by the Department within seven (7) business days of the date of the request by the Department, the Department may terminate the Application; or

(11) If more than 50% of the Developer Fee is deferred as reflected in the Sources and Uses exhibit in the Application or the commitments from the lender or syndicator.

(c) Ineligible Developments. Those Developments identified in paragraphs (1) - (14) of this subsection are considered ineligible for funding under the Housing Tax Credit Program:

(1) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for Housing Tax Credits if the Development involves the conversion of the building to a non-transient multifamily residential Development;

(2) A property that provides continual or frequent nursing, medical or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(3) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;

(4) Any Qualified Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such;

(5) Any Development with any building(s) with four or more stories that does not include an elevator;

(6) Any Qualified Elderly Development proposing more than 70% two-bedroom Units;

(7) Any Development that violates §1.15 of this title (relating to Integrated Housing Rule);

(8) Any Development located in an Urban Area involving New Construction, Reconstruction or Adaptive Reuse of Units (except for a Qualified Elderly Development, a Development composed entirely of single family dwellings, and certain specific types of transitional housing for the homeless and Single Room Occupancy units, as provided in §42(i)(3)(B)(iii) and (iv) of the Code) in which any of the designs in subparagraphs (A) - (E) of this paragraph are proposed. For Applications involving a combination of single family detached dwellings and multifamily dwellings, the percentages in this subparagraph do not apply to the single family detached dwellings, but they do apply to the multifamily dwellings. An Application may reflect a total of Units for a given bedroom size greater than the percentages in subparagraphs (A) - (E) of this paragraph to the extent that the increase is only to reach the next highest number divisible by four:

(A) More than 30% of the total Units are one bedroom and/or Efficiency Units; or

(B) More than 55% of the total Units are two bedroom Units; or

(C) More than 40% of the total Units are three bedroom Units; or

(D) More than 5% of the total Units in the Development with four or more bedrooms; or

(E) Only two and three bedroom Unit Developments;

(9) Any Development which is intended to house seniors that is not consistent with the definition of a Qualified Elderly Development;

(10) Any Development that contains residential Units that violates the general public use requirement under Treasury Regulation §1.42-9;

(11) Development Sites with negative characteristics in subparagraphs (A) - (G) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or TDRO-USDA are exempt. For purposes of this exhibit, the term 'adjacent' is interpreted as sharing a boundary with the Development Site. The distances are to be measured from all boundaries of the Development Site to all boundaries of the property containing the negative characteristic. If none of these negative features exist, the Applicant must sign a certification to that effect. The negative characteristics include:

(A) Developments located adjacent to or within 300 feet of junkyards;

(B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail; (Rural Developments funded through TRDO-USDA are exempt);

(C) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;

(D) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills;

(E) Developments where the buildings are located within the "fall line" of high voltage transmission power lines;

(F) Developments where the buildings are located within the accident zones or clear zones for commercial or military airports; or

(G) Development is located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in §243.002 of the Texas Government Code.

(12) One Mile Same Year Rule. Staff will not recommend an allocation in the same allocation cycle if the Developments are, or will be, located less than one linear mile apart as determined by the Department. If the Board forward commits credits from the following year's State Housing Credit Ceiling, the Development is considered to be in the calendar year in which the Board votes, not in the year of the State Housing Credit Ceiling. This limitation applies only to communities contained within counties with populations exceeding one million. For purposes of this chapter, any two sites not more than one linear mile apart are deemed to be "in a single community." (§2306.6711(f)) This restriction does not apply to the allocation of Housing Tax Credits to Developments financed through the Tax-Exempt Bond program, including the Tax-Exempt Bond Develop-

ment Applications under review and existing Tax-Exempt Bond Developments in the Department's portfolio; and (§2306.67021)

(13) Unacceptable Sites. Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department, based on the evaluation factors identified in the Site Evaluation form, augmented by any other inspections or other documented findings of the Department. The Department will advise the Applicant if it makes an initial finding that a proposed site is unacceptable and provide the applicant with a reasonable opportunity to address any identified concerns. If in the Department's reasonable judgment the Applicant is not able to address adequately the Department's concerns regarding the site, the Department will issue a determination that the site is unacceptable. If not appealed in accordance with §49.10(d) of this chapter (relating to Appeals Process), this determination becomes final.

(14) A Development that does not provide all of the following amenities will be considered ineligible. These amenities must be at no charge to the tenants. All New Construction, Reconstruction or Adaptive Reuse Units must provide the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation Developments must provide the amenities in subparagraphs (C) - (M) of this paragraph unless expressly identified as not required. (§2306.187) Deviations for good cause, by which one or more of the foregoing will not be provided, must be approved prior to award and the request for such deviation must be included in the Application. The Executive Director may issue such approvals. Requests not approved may be appealed to the Board in accordance with §49.10(d) of this chapter.

(A) All New Construction Units must be wired with RG-6 COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(B) Laundry Connections;

(C) Blinds or window coverings for all windows;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star rated dishwasher (not required for TRDO-USDA or SRO Developments; Rehabilitation Developments exempt from dishwasher if one was not originally in the unit);

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

(H) Exhaust/vent fans (vented to the outside) in bathrooms;

(I) Energy-Star rated ceiling fans in living areas and bedrooms;

(J) Energy-Star rated lighting in all Units which may include compact florescent bulbs;

(K) Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252;

(L) All Units must be air-conditioned; and

(M) Fire sprinklers in all Units where required by local code.

§49.5. Site and Development Restrictions.

(a) Floodplain. Any Development proposing New Construction or Reconstruction and located within the one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the flood plain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. No buildings or roads that are part of a Development proposing Rehabilitation (excluding Reconstruction) with the exception of Developments with existing and ongoing federal funding assistance from HUD or TDRO-USDA, will be permitted in the one-hundred (100) year floodplain unless they already meet the requirements established in this subsection for New Construction, or if the Unit of General Local Government has undertaken mitigation efforts and can establish that the property is no longer within the one-hundred (100) year floodplain.

(b) Credit Amount. (§2306.6711(b)) An Applicant may not request more than $2 million in annual tax credits for any given Application. The Department shall not allocate more than $2 million of tax credits in any given Application Round to any Applicant, Developer, Related Party, Affiliate or Guarantor (unless the Guarantor is also exclusively the General Contractor). Tax-Exempt Bond Development Applications are not subject to this limitation and Tax-Exempt Bond Development Applications will not count towards the total limit on tax credits per Applicant. Competitive Housing Tax Credits approved by the Board during the 2011 calendar year, including commitments from the 2011 Credit Ceiling and forward commitments from the 2011 Credit Ceiling, are applied to the credit cap limitation for the 2012 Application Round. In order to evaluate this $2 million limitation, nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must provide the documentation required in the Application with regard to this requirement. All entities that share a Principal are Affiliates. For purposes of determining the $2 million limitation of tax credits, a Person is not deemed to be an Affiliate solely because it:

(1) raises or provides equity;

(2) provides "qualified commercial financing";

(3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services;

(4) receives fees as a Development Consultant or Developer that do not exceed 10% of the Developer Fee (or 20% for Qualified Nonprofit Developments) to be paid or $150,000, whichever is greater; or

(5) provides or supports the Applicant's financial capacity for the proposed Development.

(c) Limitations on the Size of Developments.

(1) The minimum Development size will be 16 Units.

(2) Developments in Rural Areas involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) will be limited to 80 Units. Rehabilitation Developments (excluding Reconstruction) do not have a limitation as to the number of Units.

(3) Urban Developments involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings), in the Competitive Housing Tax Credit Application Round will be limited to 252 total Units, wherein the maximum Department administered Units will be limited to 200 Units. Tax-Exempt Bond Developments will be limited to 252 restricted and total Units. These maximum Unit limitations also apply to those Developments which involve a combination of Rehabilitation, Reconstruction, and New Con-

struction. Only Developments that consist solely of acquisition/Rehabilitation or Rehabilitation may exceed the maximum Unit restrictions.

(4) For Applications that are proposing an additional phase to an existing tax credit Development; that are otherwise adjacent to an existing tax credit Development; or that are proposing a Development on a contiguous site to another Application awarded in the same program year, the combined Unit total for the existing and proposed Developments may not exceed the maximum allowable Development size set forth in this subsection unless:

(A) the first phase of the Development has been completed and has maintained occupancy of at least 90% for a minimum six (6) month period as reflected in the submitted rent roll; or

(B) a resolution from the Governing Body of the city or county, in which the proposed Development is located, dated no more than one (1) year old from the date the Application is submitted. Such resolution must state that there is a need for additional Units and that the Governing Body has reviewed a market study, the conclusion of which supports the need for additional Units. The resolution must be submitted to the Department by the Resolution Delivery Date as indicated in §49.3 of this chapter (relating to Program Calendar); or

(C) the proposed Development is intended to provide replacement of previously existing affordable Units on the Development Site or that were originally located within a one mile radius from the Development Site; provided, however, the combined number of Units in the proposed Development may not exceed the number of Units being replaced. Documentation of such replacement units must be provided.

(d) Developments Proposing to Qualify for a 30% increase in Eligible Basis. Staff will only recommend a 30% increase in Eligible Basis if paragraphs (2) and (3) of this subsection do not apply to Tax-Exempt Bond Applications:

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 30% Housing Tax Credit Units per households in the tract as established by the U.S. Census Bureau for the most recent Decennial Census. Developments located in a QCT that has in excess of 30% Housing Tax Credit Units per households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5)(C) of the Code, unless the Development is proposing only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings). Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. The eleven (11) digit census tract number must be clearly marked on the map. These ineligible Qualified Census Tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report;

(2) The Development qualifies for and receives Renewable Energy Tax Credits. For purposes of this paragraph, the Application will be required to include an architect's letter or signed third party contractor bid as evidence that the Applicant will be eligible to request Renewable Energy Tax Credits in its income tax filings. In addition, the architect's letter or signed third party contractor bid must include a statement that the increased cost differential of the Renewable Energy items over non Renewable Energy alternatives exceeds the value of the energy tax credits to be received. The Applicant will be required to show proof of receipt of the Renewable Energy Tax Credits at the time of Cost Certification. Any amenities as it relates to this item must benefit the entire Development; or

(3) Pursuant to the authority granted by H.R. 3221, the Development meets one of the criteria described in subparagraphs (A) - (D) of this paragraph:

(A) Any Rural Development;

(B) Developments proposing at least 50% of the total number of Units for Supportive Housing;

(C) Developments proposing to provide 10% of the Low-Income Units, that will serve individuals and families at or below 30% of AMGI, in excess of those that are in §49.9(a)(3) of this chapter (relating to Selection Criteria); or

(D) Developments proposed in high opportunity areas as provided in clauses (i) - (iii) of this subparagraph:

(i) A four story or greater Development with structural parking that is proposed to be located within one-quarter mile of existing major bus transfer centers, regional or local commuter rail transportation stations, and/or Transit Oriented Districts that are accessible to all residents including Persons with Disabilities; or

(ii) A Development that is proposed to be located in a census tract which has an AMGI that is higher than the AMGI of the county or place in which the census tract is located as of the first day of the Application Acceptance Period; or

(iii) A Development that is proposed in a census tract that has no greater than 10% poverty population according to the most recent census data (these census tracts are designated in the 2011 Housing Tax Credit Site Demographic Characteristics Report).

(4) The Development proposing to build in an area impacted by a disaster for which federal legislation providing additional credits has been enacted.

§49.6. Allocation Process.

(a) Regional Allocation Formula. This formula, developed by the Department, establishes separate targeted tax credit amounts for Rural Areas and Urban Areas within each of the Uniform State Service Regions. Each Uniform State Service Region's targeted tax credit amount will be published on the Department's website. The regional allocation for Rural Areas is referred to as the Rural Regional Allocation and the regional allocation for Urban Areas is referred to as the Urban Regional Allocation. Developments qualifying for the Rural Regional Allocation must meet the Rural Development definition. The Regional Allocation target will reflect that at least 20% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments in Rural Areas with a minimum of $500,000 for each Uniform State Service Region. (§2306.111(d)(3); §2306.1115)

(b) Allocation Set-Asides. An Applicant may elect to compete in as many of the following Set-Asides for which the proposed Development qualifies: (§2306.111(d))

(1) Nonprofit Set-Aside. At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code. Qualified Nonprofit Organizations must have the Controlling interest in the Development Owner applying for this Set-Aside. If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the nonprofit Set-Aside must have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or a co-Developer as evidenced in the development agreement; (§2306.6729 and §2306.6706(b))

(2) USDA Set-Aside. At least 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through TRDO-USDA. (§2306.111(d)(2)) If an Application in this Set-Aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this Set-Aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region. Developments financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program, in whole or in part, will not be considered under this Set-Aside. Any Rehabilitation or Reconstruction of an existing §515 Development that retains the §515 loan and restrictions will be considered under the At-Risk Development and TRDO-USDA Set-Asides, unless such Development is also financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program. Commitments of 2011 Competitive Housing Tax Credits issued by the Board in 2011 will be applied to each Set-Aside, Rural Regional Allocation, Urban Regional Allocation and/or TRDO-USDA Set-Aside for the 2011 Application Round as appropriate;

(3) At-Risk Set-Aside. At least 15% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional formula required under subsection (a) of this section. Through this Set-Aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5% of the State Credit Ceiling associated with this Set-Aside may be given priority to Rehabilitation Developments funded with TRDO. An At-Risk Development is a Development that: (§2306.6702)

(A) Has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under at least one of the following federal laws, as applicable:

(i) Section 221(d)(3) and (5), National Housing Act (12 U.S.C. §17151);

(ii) Section 236, National Housing Act (12 U.S.C. §1715z-1);

(iii) Section 202, Housing Act of 1959 (12 U.S.C. §1701q);

(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §1701s);

(v) The Section 8 Additional Assistance Program for housing Developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development;

(vi) The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development;

(vii) Sections 514 - 516, Housing Act of 1949 (42 U.S.C. §§1484 - 1486); or

(viii) Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. §42); and

(B) Is subject to the following conditions:

(i) The stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two (2) calendar years of July 31 of the year the Application is submitted); or

(ii) The federally insured mortgage on the Development is eligible for prepayment or is nearing the end of its mortgage term (the term will end within two calendar years of July 31 of the year the Application is submitted);

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in subparagraph (A) of this paragraph will not qualify as an At-Risk Development unless the redevelopment will include the same site;

(D) Developments must be at risk of losing all affordability from all of the financial benefits available on the Development, provided such benefit constitutes a subsidy, described in subparagraph (A) of this paragraph on the site. However, Developments that have an opportunity to retain or renew any of the financial benefit described in subparagraph (A) of this paragraph must retain or renew all possible financial benefit to qualify as an At-Risk Development;

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a qualified contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II completed and, if applicable, documentation from the original application regarding the right of first refusal.

(c) Redistribution of Credits. (§2306.111(d)) If any amount of Housing Tax Credits remain after the initial commitment of Housing Tax Credits among the Set-Asides, Rural Regional Allocation and Urban Regional Allocation, the Department may redistribute the credits amongst the different regions and Set-Asides based on the need to most closely achieve regional allocation goals and the level of demand exhibited in the Uniform State Service Regions during the Application Round. However, if there are any tax credits set aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after the allocation under §49.7(g)(3) of this chapter (relating to Application Process), those tax credits shall be made available in any other Rural Area in the state, first, and then to Developments in Urban areas of any uniform state service region. (§2306.111(d)(3)) As described in subsection (b)(1) and (2) of this section, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits will be transferred from a Uniform State Service Region which does not have enough qualified Applications to meet its regional credit distribution amount, then those credits will be apportioned to the other Uniform State Service Regions.

§49.7. Application Process.

(a) The application process has two parts, a pre-application which is voluntary and applies only to Applications submitted under the State Housing Credit Ceiling and an Application which is mandatory. An Applicant that does not provide an Application on or before the deadlines provided for herein is not eligible to be placed on the list of eligible Applicants to which awards of tax credits may be made. Pre-applications and Applications submitted to the Department are subject to restrictions on Ex Parte Communications as further described in paragraph (1) of this subsection and the Administrative Deficiency process as further described in paragraph (2) of this subsection.

(1) Ex Parte Communications. (§2306.1113)

(A) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, except for communications that actually occur in properly posted open meetings, as permitted by §2306.1113 of the Texas Government Code a member of the Board may not communicate with any other Board member or with the following Persons:

(i) an Applicant or Related Party; and

(ii) any Person who is:

(I) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:

(-a-) a General Contractor; and

(-b-) a Developer; and

(-c-) a General Partner, Principal or Affiliate of a General Partner or General Contractor; or

(II) employed as a consultant, lobbyist, or attorney by an Applicant or a Related Party.

(B) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, an employee of the Department may communicate about any Application with the following Persons:

(i) the Applicant or a Related Party; and

(ii) any Person who is:

(I) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:

(-a-) a General Partner or General Contractor; and

(-b-) a Developer; and

(-c-) a Principal or Affiliate of a General Partner or General Contractor; or

(II) employed as a consultant, lobbyist or attorney by the Applicant or a Related Party.

(C) A communication under paragraph (2) of this subsection may be oral or in any written form, including electronic communication through the Internet, and must satisfy the following conditions:

(i) the communication must be restricted to technical or administrative matters directly affecting the Application;

(ii) the communication must occur or be received on the premises of the Department during established business hours; and

(iii) a record of the communication must be maintained and included with the Application for purposes of Board review and must contain the following information:

(I) the date, time, and means of communication;

(II) the names and position titles of the Persons involved in the communication and, if applicable, the Person's relationship to the Applicant;

(III) the subject matter of the communication; and

(IV) a summary of any action taken as a result of the communication.

(D) Notwithstanding subparagraph (A) or (B) of this paragraph, a Board member or Department employee may communicate without restriction with a Person listed in subparagraph (A) or (B) of this paragraph during any Board meeting or public hearing held with respect to the Application, but not during a recess or other non-record portion of the meeting or hearing.

(E) Subparagraph (A) of this paragraph does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present, provided that all matters related to Applications to be considered by the Board will not be discussed.

(2) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow the Applicant an opportunity to provide clarification or correction to information originally submitted in the Application. For example, if exhibits and other information required under §49.8 of this chapter (relating to Threshold Criteria) are not originally submitted in the Application (i.e. financing commitment missing entirely from the Application) staff will recommend termination of the Application. However, for information missing in part from the Application (i.e. financing commitment is submitted but it is not executed by the lender) staff will request the missing or corrected information via an Administrative Deficiency. For exhibits and other information required under §49.9 of this chapter (relating to Selection Criteria) not originally submitted in the Application (i.e. Community Revitalization Plan or letter from Appropriate Local Official missing entirely from the Application) staff will not award points for that item, even if points were requested in the Applicant's Self Scoring Form. For information missing in part from the Application (i.e. the letter from the Appropriate Local Official does not include all required information) staff will request the missing information via an Administrative Deficiency and award points provided the information submitted in response to the Administrative Deficiency is satisfactory to the Department.

(A) Administrative Deficiencies for Applications submitted under the State Housing Credit Ceiling and Rural Rescue Applications. If an Application contains Administrative Deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, Quantifiable Community Participation (QCP) and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any Set-Asides, increase the requested credit amount, revise the Unit mix (both income levels and bedroom mixes), or adjust their self-score except in response to a direct request from the Department as a result of an Administrative Deficiency or by approved amendment of an Application after a commitment or allocation of tax credits as further described in §49.13(b) of this chapter (relating to Board Reevaluation) (§2306.6708). This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division during their review. To the extent that the review of Administrative

Deficiency documentation during the review alters the score assigned to the Application, Applicants will be re-notified of their final score.

(B) Administrative Deficiencies for Tax Exempt Bond Applications. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five (5) business days. Failure to resolve all outstanding deficiencies by 5:00 p.m. on the fifth business day following the date of the deficiency notice will result in a penalty fee of $500 for each business day the deficiency remains unresolved. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination pursuant to §49.4 of this chapter (relating to Ineligibility). The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. The Application will not be presented to the Board for consideration until all outstanding fees have been paid. This Administrative Deficiency process applies equally to the Real Estate Analysis Division review and feasibility evaluation and the same penalty and termination will be assessed.

(b) Pre-application Submission. The purpose of the pre-application process is to enable Applicants interested in pursuing the Application to assess generally who else is interested in submitting Applications and the nature of their proposed Development. Based on an understanding of the potential competition they can make a better and more informed decision whether they wish to proceed to prepare and submit an Application.

(1) As used herein a "complete pre-application" means a pre-application that meets all of the Department's criteria for an Application with all required information and exhibits provided pursuant to the application checklist provided in the Tax Credit (Procedures) Manual.

(2) The pre-application must be submitted in accordance with the Pre-application Acceptance Period and Final Delivery Date as identified in §49.3 in this chapter (relating to Program Calendar).

(3) To submit the complete pre-application the Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete pre-application to the Department prior to the Pre-application Final Delivery Date.

(4) The pre-application must be accompanied by a paper certification with an original signature in the form provided in the pre-application. Furthermore, the pre-application must be a single file, individually bookmarked at each of the required volumes and exhibits presented in the order as required in the application checklist.

(5) If a pre-application is not submitted to the Department on or before the applicable deadline indicated in §49.3 of this chapter, the Applicant will be deemed to have not made a pre-application.

(6) The required pre-application fee as described in §49.14 of this chapter (relating to Program Related Fees) must be submitted with the pre-application in order for the pre-application to be accepted by the Department.

(7) Only one pre-application may be submitted by an Applicant for each site. Prior to the pre-application deadline Applicants may withdraw their pre-application and subsequently file a new pre-application utilizing the original pre-application fee that was paid as long as no evaluation was performed by the Department.

(8) Department review at this stage is limited and not all issues of eligibility and threshold are reviewed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, Threshold or documentation requirements. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or threshold deficiencies at the time of pre-application. The rejection of a pre-application shall not preclude an Applicant from submitting an Application with respect to a particular Development or site at the appropriate time.

(c) Pre-application Threshold Criteria. The Pre-application Threshold Criteria include:

(1) Submission of a pre-application;

(2) Evidence of Site Control through March 1, 2011 as evidenced by the documentation required under §49.8(8)(A) of this chapter; and

(3) Evidence in the form of a certification that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site as follows:

(i) No later than the Pre-application Neighborhood Organization Request Date identified in §49.3 of this chapter, the Applicant must e-mail, fax or mail with registered receipt (email or fax to be "receipt confirmed") a completed "Neighborhood Organization Request" letter as provided in the pre-application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

(ii) If no reply letter is received from the local elected officials by the Pre-application Response to Neighborhood Organization Request Date, then the Applicant must certify to that fact in the in the pre-application;

(iii) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the pre-application submission.

(B) Not later than the date the pre-application is submitted, notification must be sent to all of the following individuals and

entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism in the format required in the "Pre-application Notification Template" provided in the pre-application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials, however, are required to notify county officials. Evidence of notification is required in the form of a certification provided in the pre-application, although it is encouraged that Applicants retain proof of delivery of the notifications, to the persons or entities prescribed in clauses (i) - (ix) of this subparagraph, in the event that the Department requires proof of notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by the recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the pre-application is submitted.

(i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site;

(ii) Superintendent of the school district containing the Development;

(iii) Presiding officer of the board of trustees of the school district containing the Development;

(iv) Mayor of any municipality containing the Development;

(v) All elected members of the Governing Body of any municipality containing the Development;

(vi) Presiding officer of the Governing Body of the county containing the Development;

(vii) All elected members of the Governing Body of the county containing the Development;

(viii) State senator of the district containing the Development; and

(ix) State representative of the district containing the Development.

(C) Each such notice must include, at a minimum, all of the following:

(i) The Applicant's name, address, individual contact name and phone number;

(ii) The Development name, address, city and county;

(iii) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(iv) Whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.) and population being served (general or elderly);

(vi) The approximate total number of Units and approximate total number of low-income Units;

(vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate percentage of Units that are market rate;

(viii) The number of Units and proposed rents (less utility allowances) for the low-income Units and any market rate Units, if applicable. Rents to be provided are those that are effective at the time of the pre-application, which are subject to change as annual changes in the area median income occur; and

(ix) The expected completion date if credits are awarded.

(D) Pre-applications not meeting the Pre-application Threshold Criteria identified in this subsection will be terminated and the Applicant will receive a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Pre-application Threshold Criteria and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Pre-application Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled.

(d) Pre-application Results. Only pre-applications which have satisfied all of the Pre-application Threshold Criteria requirements set forth in subsection (c) of this section and §49.9(a)(14) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a Development on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

(e) Application Submission. An Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application in order to be considered for Housing Tax Credits.

(1) As used herein a "complete application" means an Application that meets all of the Department's criteria for an Application with all required information and exhibits provided pursuant to the application checklist provided in the Tax Credit (Procedures) Manual.

(2) For Applications submitted under the State Housing Credit Ceiling, the Application must be submitted by the Full Application Delivery Date as identified in §49.3 of this chapter. The Full Application Delivery Date for Tax-Exempt Bond Developments is triggered by the Certificate of Reservation issued by the Texas Bond Review Board and is further defined in §49.11 of this chapter (relating to Tax-Exempt Bond Developments).

(3) To submit the complete application the Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete application to the Department.

(4) The Application must be accompanied by a paper certification with an original signature in the form provided in the Application. Furthermore, the Application must be a single file, individually bookmarked at each of the required volumes and exhibits presented in the order as required by the application checklist.

(5) If an Application is not submitted to the Department on or before the applicable deadline indicated in paragraph (1) of this subsection, the Applicant will be deemed to have not made an Application.

(6) The required Application fee as described in §49.14 of this chapter must be submitted with the Application in order for the Application to be accepted by the Department.

(7) Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original Pre-application Fee that was paid as long as no evaluation was performed by the Department.

(f) Evaluation Process. Applications submitted for consideration (including Tax Exempt Bond Developments) will be reviewed according to the Eligibility, Threshold and for competitive applications under the State Housing Credit Ceiling, for Selection Criteria. An Application, during any of these stages of review, may be determined to be ineligible as further described in §49.4 of this chapter. Applicants will be notified in these instances.

(g) Subsequent Evaluation and Methodology for Award Recommendations to the Board. The Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division. In general these will be those Applications identified as most competitive and that meet the requirements of Eligibility and Threshold. However, an Application may be reviewed by the Real Estate Analysis Division prior to the completion of the Eligibility and Threshold reviews. The procedure identified in paragraphs (1) - (6) of this subsection will also be used in making recommendations to the Board:

(1) Applications with the highest scores in the TRDO-USDA Allocation until the minimum requirements stated in §49.6(b)(2) of this chapter (relating to USDA Set-Aside) are attained. If an Application in this Set-Aside involves Rehabilitation it will be attributed to, and come from the, At-Risk Set-Aside; if an Application in this Set-Aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region;

(2) Applications with the highest scores in the At-Risk Set-Aside Statewide until the minimum requirements stated in §49.6(b)(3) of this chapter (relating to At-Risk Set-Aside) of this chapter are attained;

(3) Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments in each of the 26 sub-regions, regardless of Set-Aside, in accordance with the requirements under §49.6(a) of this chapter (relating to Regional Allocation Formula), without exceeding the credit amounts available for a Rural Regional Allocation and Urban Regional Allocation in each region. To the extent that Applications in the At-Risk and TRDO-USDA Set-Asides are not competitive enough within their respective Set-Asides, they will also be able to compete, with no Set-Aside preference, within their appropriate sub-region;

(4) If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after allocation under paragraph (3) of this subsection those tax credits shall then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the Region's Rural Allocation. (§2306.111(d)(3)) This will be referred to as the Rural collapse;

(5) If there are any tax credits remaining in any sub-region after the Rural collapse, in the Rural Regional Allocation or Urban Regional Allocation, they then will be combined and made available to the Application in the most underserved sub-region as compared to the sub-region's allocation. This will be referred to as the statewide collapse;

(6) Staff will ensure that at least 10% of the State Housing Credit Ceiling is allocated to Qualified Nonprofit Organizations to satisfy the Nonprofit Set-Aside. If 10% is not met through the existing competitive process, then the Department will add the highest scoring Application by a Qualified Nonprofit Organization statewide until the 10% Nonprofit Set-Aside is met. Staff will ensure that at least 20% of the State Housing Credit Ceiling is allocated to Rural Developments. If this 20% minimum is not met through the existing competitive process, then the Department will add the highest scoring Rural Development Application statewide until the 20% Rural Development Set-Aside is met. Selection for each of the Set-Asides will take precedence over selection for the Rural Regional Allocation and Urban Regional Allocation. Funds for the Rural Regional Allocation or Urban Regional Allocation within a region, for which there are no eligible feasible Applications, will be redistributed as provided in §49.6(c) of this chapter (relating to Redistribution of Credits). If the Department determines that an allocation recommendation would cause a violation of the $2 million limit described in §49.5(b) of this chapter (relating to Credit Amount), the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting Set-Aside and regional allocation goals. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available Housing Tax Credits according to regional allocation goals and Set-Aside categories. To enable the Board to establish a waiting list, the Department shall underwrite as many additional Applications as necessary to ensure that all available Competitive Housing Tax Credits are allocated within the period required by law. ((§2306.6710(a) - (f); §2306.111))

(h) Underwriting Evaluation. The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate allocation of Housing Tax Credits. In making this determination, the Department will use the Underwriting Rules and Guidelines found in §1.32 of this title. The Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(i) Compliance Evaluation. After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status in accordance with Chapter 60 of this title (relating to Compliance Administration), and will be evaluated in detail for eligibility under §49.4 of this chapter.

(j) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns. Such inspection will evaluate the Development Site based upon the criteria set forth in the Site Evaluation form. The evaluations shall be based on the condition of the surrounding neighborhood, including appropriate environmental and aesthetic conditions and proximity to retail, medical, recreational, educational facilities, and employment centers. The site's appearance to prospective tenants and its accessibility via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites include, without limitation, those containing a non-mitigable environmental factor that may adversely affect the health and safety of the residents. For Developments applying under the TRDO-USDA Set-Aside, the Department may rely on the physical site inspection performed by TRDO-USDA.

(k) Application Process for Rural Rescue Applications under the 2012 Credit Ceiling. The Rural Rescue Applications will be reviewed according to the process outlined in this subsection.

(1) Submission Requirements. Rural Rescue Applications may be submitted during the Rural Rescue Application Submission Period as identified in §49.3 of this chapter. A complete Application must be submitted at least sixty (60) days prior to the date of the Board meeting at which the Applicant would like the Board to act on the proposed Development. Applications must include the full Application Fee as further described in §49.14 of this chapter. Applicants must submit documents in accordance with the application checklist provided in the Tax Credit (Procedures) Manual for all Volumes, including Volume IV.

(A) Applications will be processed on a first-come, first-served basis. Applications unable to meet all Administrative Deficiency and underwriting requirements within thirty (30) days of the request by the Department, will remain under consideration, but will lose their submission status and the next Application in line will be moved ahead in order to expedite those Applications ready to proceed. Applications for Rural Rescue will be processed and evaluated as described in this paragraph. Applications will be reviewed to ensure that the Application is eligible as a rural "rescue" Development as described in paragraph (2) of this subsection.

(B) Prior to the Development being recommended to the Board, TRDO-USDA shall provide the Department with a copy of the physical site inspection report performed by TRDO-USDA, if applicable.

(2) Eligibility and Threshold Review. All Rural Rescue Applications will be reviewed pursuant to §49.8 and §49.9 of this chapter. Additional eligibility requirements include the criteria listed in subparagraphs (A) - (C) of this paragraph. Applications found to be ineligible will be notified.

(A) Applications must be funded through TRDO-USDA;

(B) Applications must able to provide evidence that the loan:

(i) has been foreclosed and is in the TRDO-USDA inventory; or

(ii) is being foreclosed; or

(iii) is being accelerated; or

(iv) is in imminent danger of foreclosure or acceleration; or

(v) is for an Application in which two adjacent parcels are involved, of which at least one parcel qualifies under clauses (i) - (iv) of this subparagraph and for which the Application is submitted under one ownership structure, one financing plan and for which there are no market rate units; and

(C) Applicants must be identified as in compliance with TRDO-USDA regulations.

(3) Selection Criteria Review. All Rural Rescue Applications will be evaluated against the Selection Criteria pursuant to §49.9 of this chapter and a score will be assigned to the Application. The minimum score for Selection Criteria as identified in §49.9(a) of this chapter is not required to be achieved to be eligible.

(4) Credit Ceiling and Applicability of this chapter. All Rural Rescue Applicants will receive their credit allocation out of the 2012 Credit Ceiling and therefore, will be subject to the rules and guidelines identified in the 2012 Qualified Allocation Plan (QAP). However, because the 2012 QAP will not be in effect during the time period that the Rural Rescue Applications can be submitted, Applications submitted and eligible under the Rural Rescue Set-Aside will be considered to have satisfied the requirements of the 2012 QAP by having satisfied the requirements of the 2011 QAP, to the extent permitted by statute.

(5) Procedures for Recommendation to the Board. Consistent with subsection (c) of this section, staff will make its recommendation to the Committee. The Committee will make Commitment recommendations to the Board. Staff will provide the Board with a written, documented recommendation which will address at a minimum the financial and programmatic viability of each Application and a breakdown of which Selection Criteria were met by the Applicant. The Board will make its decision based on §49.10(a) of this chapter (relating to Board Decisions). Any award made to a Rural Rescue Development will be credited against the TRDO-USDA Set-Aside for the 2011 Application Round, as required under subsection (g)(3) of this section.

(6) Limitation on Allocation. No more than $350,000 in credits will be forward committed from the 2011 State Housing Credit Ceiling. To the extent Applications are received that exceed the maximum limitation; staff will prepare the award for Board consideration noting for the Board that the award would require a waiver of this limitation.

§49.8. Threshold Criteria.

The Threshold Criteria listed in this section are mandatory requirements that must be submitted at the time of Application submission unless specifically indicated otherwise. If any of the Threshold Criteria indicated below are not resolved, clarified or corrected to the satisfaction of the Department, through the Administrative Deficiency process the Application will be terminated.

(1) Submission of the Application. Includes the entire Uniform Application and any other supplemental forms which may be required by the Department and in the format prescribed by the Department. (§2306.1111)

(2) Governing Body Resolutions. The following resolutions, if applicable to the proposed Development, must be submitted by the Resolutions Delivery Date as indicated in §49.3 of this chapter (relating to Program Calendar) and may not be more than one year old from the date the Volume 1 is submitted to the Department.

(A) Twice the State Average. If the Development is located in a municipality or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board) the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must reference this rule and authorize an allocation of Housing Tax Credits for the Development; (§2306.6703(a)(4))

(B) One Mile Three Year Rule. If the Applicant proposes to construct a Development proposing New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) that is located one linear mile (measured by a straight line on a map) or less from a Development that: (§2306.6703(a)(3))

(i) Serves the same type of household as the new Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(ii) has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Volume I is submitted); and

(iii) has not been withdrawn or terminated from the Housing Tax Credit Program;

(iv) an Application is not ineligible under this paragraph if:

(I) the Development is using federal HOPE VI funds received through the United States Department of Housing and Urban Development; locally approved funds received from a public improvement district or a tax increment financing district; funds provided

to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.); or funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.); or

(II) the Development is located in a county with a population of less than one million; or

(III) the Development is located outside of a metropolitan statistical area; or

(IV) the Governing Body, of the Unit of General Local Government where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under subparagraphs (A) - (C) of this paragraph.

(v) In determining when an existing Development received an allocation as it relates to the application of the three-year period, the Development will be considered from the date the Board took action on approving the allocation of tax credits. In dealing with ties between two or more Developments as it relates to this rule, refer to §49.9(b) of this chapter (relating to Selection Criteria).

(C) Developments in Certain Census Tracts. Staff will not recommend and the Board will not allocate Housing Tax Credits for a Competitive Housing Tax Credit or Tax-Exempt Bond Development located in a census tract that has more than 30% Housing Tax Credit Units per total households in the census tract as established by the U.S. Census Bureau for the most recent Decennial Census unless:

(i) The Development is in a Place whose population is less than 100,000;

(ii) The Applicant proposes only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings); or

(iii) Submits to the Department an approval of the Development referencing this rule in the form of a resolution from the Governing Body of the appropriate municipality or county containing the Development. These ineligible census tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish that the Rehabilitation will substantially improve the condition of the housing and will involve at least $15,000 per Unit in direct hard costs (including site work, contingency, contractor profit, overhead, and general requirements) unless financed with TRDO-USDA in which case the minimum is $9,000.

(4) Experience Certification. No later than the Experience Certification Delivery Date as indicated in §49.3 of this chapter, an Applicant must submit the documents required in this section to obtain the required certification. Upon receipt of the evidence required under this section, a certification from the Department will be provided to the Applicant for inclusion in its Application(s). Experience must meet the criteria of both subparagraphs (A) and (B) of this paragraph with evidence of such provided as stated in subparagraphs (C) and (D) of this paragraph.

(A) One of the Principals of the Development Owner, General Partner, Developer or the General Contractor must provide evidence reasonably acceptable to the Department that they have acquired actual experience through previous participation in and subsequent completion of comparable residential units (single family, multifamily) as demonstrated by the submission of a housing tax credit Application, receipt of award, submission of post award activities (Commitment, Carryover, 10% test, etc.), construction oversight, lease-up, stabilization, and receipt of IRS Forms 8609. Executive Directors of non-profits and public housing authorities may qualify for this experience requirement; and

(B) The Principal requesting the certificate must have experience with the same type of construction as the Application is proposing (single family, multifamily, new construction, rehabilitation, etc.) and have acquired their experience in connection with a development with at least 80% as many units as the Units in the Development for which Application is being made, in no event less than 36 units. The Department will, in issuing an Experience Certificate, state any limitations. Persons who establish that they have participated in the development of 200 units or more will not be restricted. Experience of multiple parties may not be aggregated. Rehabilitation experience must have been substantial and involved at least $15,000 of direct cost per Unit.

(C) Evidence for experience must clearly indicate that:

(i) the Principal was a Principal of the Development Owner, General Partner or Developer (of the Development submitted as experience) during the complete specified timeframe and process as identified in subparagraph (A) of this paragraph; and

(ii) the Development has been completed (as evidenced by the number of Units completed); and

(iii) the names on the forms and agreements tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application; and

(D) One or more of the following documents must be submitted as evidence of completion of the development:

(i) American Institute of Architects (AIA) Document A111 - Standard Form of Agreement between Owner & Contractor;

(ii) AIA Document G704 - Certificate of Substantial Completion;

(iii) AIA Document G702 - Application and Certificate for Payment;

(iv) Certificate of Occupancy;

(v) IRS Form 8609, (only one for per development is required);

(vi) HUD Form 9822;

(vii) Development agreements;

(viii) Partnership agreements; or

(ix) other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience.

(5) Certifications. The "Certification Form" provided in the Application confirming the following items:

(A) A certification of the basic common amenities selected for the Development. All Developments must meet at least the minimum threshold of points based on the total number of Units in the Development. These points are not associated with the Selection Criteria points in §49.9(a) of this chapter. The amenities selected must be made available for the benefit of all tenants. If fees in addition to rent are charged for amenities reserved for an individual tenant's use, then the amenity may not be included among those provided to satisfy this requirement. Developments proposing Rehabilitation (excluding Reconstruction) or proposing Single Room Occupancy will receive 1.5

points for each point item (do not round). Applications for non-contiguous scattered site housing, including New Construction, Reconstruction, Adaptive Reuse, Rehabilitation, and single-family design, will have the threshold test applied based on the number of Units per individual site, and must submit a separate certification for each individual site under control by the Applicant. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department in accordance with §49.13(b) of this chapter (relating to Amendments) and may result in a decrease in awarded credits if the substitution or change includes a decrease in cost, or in the cancellation of a Commitment, Determination Notice or Carryover Allocation if all of the Common Amenities claimed are no longer met.

(i) Applications must meet a minimum threshold of points as follows:

(I) Total Units are less than 16, 1 point is required to meet Threshold;

(II) Total Units are 17 to 24, 3 points are required to meet Threshold;

(III) Total Units are 25 to 40, 4 points are required to meet Threshold;

(IV) Total Units are 41 to 76, 7 points are required to meet Threshold;

(V) Total Units are 77 to 99, 10 points are required to meet Threshold;

(VI) Total Units are 100 to 149, 13 points are required to meet Threshold;

(VII) Total Units are 150 to 199, 16 points are required to meet Threshold; or

(VIII) Total Units are 200 or more, 19 points are required to meet Threshold;

(ii) The amenities include those items listed in subclauses (I) - (XXVI) of this clause. Both general population and Qualified Elderly Developments can earn points for providing each identified amenity unless the item is specifically restricted to one type of Development. All amenities must meet accessibility standards as further described in subparagraphs (D) and (F) of this paragraph. An Application can only count an amenity once, therefore combined functions (a library which is part of a community room) only count under one category. Spaces for activities must be sized appropriately to serve the anticipated population. The Applicant is instructed to review Chapter 60 of this title (relating to Compliance Administration) for detailed definitions and standards as it relates to the amenities listed in this subparagraph;

(I) Full perimeter fencing (2 points);

(II) Controlled gate access (2 points);

(III) Gazebo w/sitting area (1 point);

(IV) Accessible walking/jogging path separate from a sidewalk (1 point);

(V) Community laundry room with at least one washer and dryer for each 25 Units (1 point);

(VI) Barbecue grill and picnic table-at least one of each for every 50 Units (1 point);

(VII) Covered pavilion that includes barbecue grills and tables (2 points);

(VIII) Swimming pool (3 points);

(IX) Furnished fitness center (2 points);

(X) Equipped and functioning business center or equipped computer learning center (2 points);

(XI) Furnished Community room (1 point);

(XII) Library with an accessible sitting area (separate from the community room) (1 point);

(XIII) Enclosed community sun porch or covered community porch/patio (2 points);

(XIV) Service coordinator office in addition to leasing offices (1 point);

(XV) Senior Activity Room (Arts and Crafts, etc.) (2 points);

(XVI) Health Screening Room (1 point);

(XVII) Secured Entry (elevator buildings only) (1 point);

(XVIII) Horseshoe pit, putting green or shuffleboard court (1 point);

(XIX) Community Dining Room w/full or warming kitchen (3 points);

(XX) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (1 point);

(XXI) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points);

(XXII) Sport Court (Tennis, Basketball or Volleyball) (2 points);

(XXIII) Furnished and staffed Children's Activity Center (3 points);

(XXIV) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);

(XXV) Dog Park (2 points); or

(XXVI) Green Building amenities that include the following:

(-a-) Development Energy Savings (1 point for each item):

(-1-) at least 50% of the water needed annually for site irrigation is from a rain water harvesting/collection system and/or locally approved grey water collection system; or

(-2-) native trees and plans installed that are appropriate to the site's soils and microclimate and located to allow for shading in the summer and allow for heat gain in the winter;

(-b-) Tenant Energy Savings (2 points for each item):

(-1-) On-site photovoltaic panels or wind-driven turbines for generating at least 5kW of electricity that are incorporated into the engineered structural design of the roof(s) and neither of which protrude from any roof structure by more than 8 feet and are designed and wired to supplement the Development's electric power. Photographs and data sheets of the proposed equipment must be submitted with the Application;

(-2-) If the glazing area on the north- and south-facing walls of the building is at least 50% greater

than the sum of the glazing area on the east- and west-facing walls; and the east-west axis of the building is within 15 degrees of due east-west;

(-3-) If the east-west axis of the building oriented within 15 degrees of due east-west utilizes a narrow floor plate (less than 40 feet) and single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation;

(-4-) 100% of HVAC condenser units are located so they are fully shaded 75% of the time during summer months (May through August);

(-5-) Solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west; applies only to rehabilitation where windows are not replaced with Energy Star rated windows;

(-6-) Install low-flow or high efficiency toilets that exceed State requirements;

(-7-) Install bathroom lavatory faucets, showerheads and kitchen faucets that exceed the State standard. All fixtures throughout the development must meet the standard at the time of Application. Rehabilitation Developments may install compliant faucet aerators instead of replacing entire faucets;

(-8-) Provide solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development;

(-9-) Sub-metered utility meters on Rehabilitation Development without existing sub-meters;

(-10-) If the development uses Energy-Star qualified windows and glass doors exclusively; insulation, and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and Energy Star rated HVAC, and domestic hot water heaters, and insulation that exceeds Energy Star standards;

(-11-) If the project promotes energy efficiency by demonstrating a certified HERS score of 85 or lower;

(-12-) Thermally and draft efficient doors (SHGC of 0.40 or lower (for doors with glass) and U-value specified by climate zone according to the 2006 IECC) (2 points); or

(-13-) Recycling service provided throughout the compliance period;

(-c-) Other Green Features/Indoor Health (1 point for each item):

(-1-) Renewable materials, provide at least one of the following: bamboo flooring, wool carpet, linoleum flooring, straw board cabinetry, poplar OSB, or cotton batt insulation;

(-2-) Healthy flooring, provide at least one of the following for 50% of flooring: finished concrete or ceramic tile resilient flooring material that is Floor Score Certified, applied with a Floor Score Certified adhesive and comes with a minimum seven (7) year wear through warranty; or

(-3-) Healthy finish materials, use paints, stains, adhesives, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;

(-d-) LEED (Leadership in Energy and Environmental Design) Certification. If at the time of Cost Certification a LEED Certification (Certified, Silver, Gold or Platinum levels) for the Development is obtained then the maximum points allowed under this paragraph will be awarded and none of the green building amenities selected under this paragraph will need to be substantiated. Conversely, if at the time of Cost Certification a LEED Certification has not been obtained then the Applicant will be required to prove up 6 points under this subparagraph;

(B) A certification that the Development will meet the minimum threshold for size of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with the points in §49.9(a)(4) of this chapter. Developments proposing Rehabilitation (excluding Reconstruction) or Single Room Occupancy will not be subject to the requirements of this subparagraph.

(i) 550 square feet for an Efficiency Unit;

(ii) 650 square feet for a one Bedroom Unit that is not in a Qualified Elderly Development; 550 square feet for a one Bedroom Unit in a Qualified Elderly Development;

(iii) 900 square feet for a two Bedroom Unit that is not in a Qualified Elderly Development; 700 square feet for a two Bedroom Unit in a Qualified Elderly Development;

(iv) 1,000 square feet for a three Bedroom Unit; and

(v) 1,200 square feet for a four Bedroom Unit;

(C) A certification that the Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or if no local building codes are in place then to the most recent version of the International Building Code.

(D) A certification that the Applicant is in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(E) A certification that the Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses, and that the Applicant will submit a report at least once in each 90-day period following the date of the Commitment until the Cost Certification is submitted, in a format prescribed by the Department and provided at the time a Commitment is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses. (§2306.6734)

(F) Pursuant to §2306.6722 of the Texas Government Code, any Development supported with a Housing Tax Credit allocation shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. The Applicant must provide a certification from the Development engineer, an accredited architect or Department-approved third party accessibility specialist, that the Development will comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C, and this subparagraph. (§2306.6722 and §2306.6730)

(G) For Developments involving New Construction (excluding New Construction of non-residential buildings) where some Units are two-stories or single family design and are normally

exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A similar certification will also be required after the Development is completed from an inspector, architect, or accessibility specialist.

(H) A certification that the Development will be equipped with energy saving devices that meet the standard statewide energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation. The measures must be certified by the Development architect as being included in the design of each tax credit Unit at the time the 10% Test Documentation is submitted and in actual construction upon Cost Certification. (§2306.6725(b)(1))

(I) A certification that the Development will be built by a General Contractor hired by the Development Owner or the Applicant; if the Applicant serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits.

(J) A certification that the Development Owner agrees to establish a reserve account consistent with §2306.186 of the Texas Government Code and as further described in §1.37 of this title (relating to Reserve for Replacement Rules and Guidelines).

(K) A certification that the Applicant, Developer, or any employee or agent of the Applicant has not formed a Neighborhood Organization for purposes of §49.9(a)(2) of this chapter, has not given money or a gift to cause the Neighborhood Organization to take its position of support or opposition, nor has provided any assistance to a Neighborhood Organization outside of the assistance allowed under §49.9(a)(2)(A)(viii) to meet the requirements under §49.9(a)(2) of this chapter as it relates to the Applicant's Application or any other Application under consideration in 2011.

(L) Operate in accordance with the requirements pertaining to rental assistance in Chapter 60 of this title.

(M) A certification that the Development Owner will contract with a Management Company throughout the Compliance Period that will perform criminal background checks on all adult tenants, head and co-head of households.

(N) A certification that the Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veteran's and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(O) A certification that the Developer or Principal of the Applicant has not been voluntarily or involuntarily removed by a lender, equity provider, or other investors or owners, however designated, or any combination thereof. If an Applicant or Developer signs the certification, and the Department learns at a later date that a removal did take place as described, then the Application will be terminated and any Allocation made will be rescinded.

(6) Architectural Drawings. While full size design or construction documents are not required, the drawings must have an accurate and legible scale and show the dimensions. All Developments involving New Construction, or conversion of existing buildings not configured in the Unit pattern proposed in the Application, must provide all of the items identified in subparagraphs (A) - (C) of this paragraph. For Developments involving Rehabilitation for which the Unit configurations are not being altered, only the items identified in subparagraphs (A) and (C) of this paragraph are required:

(A) A site plan which:

(i) Is consistent with the number of Units and Unit mix specified in the "Rent Schedule" provided in the Application;

(ii) Is consistent with the number of buildings and building type/unit mix specified in the "Building/Unit Configuration" provided in the Application;

(iii) Identifies all residential and common buildings; and

(iv) Clearly delineates the flood plain boundary lines and shows all easements;

(B) Floor plans and elevations for each type of residential building and each common area building clearly depicting the height of each floor and a percentage estimate of the exterior composition. Adaptive Reuse Developments, are only required to provide building plans delineating each Unit by number, type and area consistent with those in the "Rent Schedule" and pictures of each elevation of the existing building depicting the height of each floor and percentage estimate of the exterior composition; and

(C) Unit floor plans for each type of Unit. The Net Rentable Areas these Unit floor plans represent should be consistent with those shown in the "Rent Schedule" and "Building/Unit Configuration" provided in the Application. Adaptive Reuse Developments, are only required to provide Unit floor plans for each distinct typical Unit type (i.e. one-bedroom, two-bedroom) and for all Unit types that vary in Net Rentable Area by 10% from the typical Unit.

(7) Development Costs, Corresponding Credit Request and Syndication Information.

(A) All Developments must submit the "Development Cost Schedule" provided in the Application. This exhibit must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period.

(B) If offsite costs are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the supplemental form "Off Site Cost Breakdown" must be provided.

(C) If projected site work costs (excluding ineligible demolition costs) include unusual or extraordinary items or exceed $9,000 per Unit, then the Applicant must provide a detailed cost breakdown prepared by a Third Party engineer or architect, and a letter from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible.

(8) Readiness to Proceed.

(A) Site Control. Evidence of Site Control in the name of the Development Owner. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development team must be identified at the time of Application (not required at Pre-application). One of the following items described in clauses (i) - (iii) of this subparagraph must be provided:

(i) A recorded warranty deed with corresponding executed settlement statement, unless required to submit items under clause (iv) of this subparagraph; or

(ii) A contract for lease (the minimum term of the lease must be at least forty-five (45) years) which is valid for the entire period the Development is under consideration for tax credits; or

(iii) A contract for sale, an exclusive option to purchase or a lease which is valid for the entire period the Development is under consideration for tax credits by the same Development Owner, Applicant or Affiliate as indicated at pre-application. For Tax Exempt Bond Development Applications, site control must be valid through December 1, 2010 with option to extend through March 1, 2011 (Applications submitted for lottery) or ninety (90) days from the date of the Certificate of Reservation with the option to extend through the scheduled TDHCA Board meeting at which the award of Housing Tax Credits will be considered (Applications not submitted for lottery). The potential expiration of Site Control does not warrant the Application being presented to the TDHCA Board prior to the scheduled meeting. Proof of consideration, as specified in the contract, must be submitted.

(iv) If the acquisition can be characterized as an identity of interest transaction, as described in §1.32 of this title (relating to Underwriting Rules and Guidelines) subclauses (I) - (III) of this clause must be provided:

(I) Documentation of the original acquisition cost in the form of a settlement statement or, if a settlement statement is not available, the seller's most recent audited financial statement specifically indicating the asset value for the Development Site; and

(II) If the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost claimed in the Application;

(-a-) An appraisal meeting the requirements of paragraph (14)(D) of this section; and

(-b-) Any other verifiable costs of owning, holding, or improving the Property that, when added to the value from subclause (I) of this clause, justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense, capitalized costs of any physical improvements made to the property that benefit the proposed Development, the cost of rezoning, replatting and or any off-site costs to provide utilities or improve access to the property that benefit the proposed Development. Additionally, an annual return of 10% may be applied to the original acquisition cost and documented holding and improvement costs; this return can be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the subject Development's award will be considered.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise maintained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the property, and the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the property and avoid foreclosure. Additionally, an annual return of 10% may be applied to the original acquisition cost and documented holding and improvement costs; this return can be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the subject Development's award will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include operating expenses, including, but not limited to, property taxes and interest expense.

(III) In no instance will the acquisition cost utilized by the underwriter exceed the lesser of the original acquisition cost evidenced by subclause (I) of this clause plus costs identified in subclause (II)(-b-) of this clause, or the "as-is" value conclusion evidenced by subclause (II)(-a-) of this clause. The resulting acquisition cost will be referred to as the "identity of interest adjusted acquisition cost."

(B) Zoning. Evidence from the appropriate local municipal authority that satisfies one of clauses (i) - (iii) of this subparagraph. Documentation may be from more than one department of the municipal authority and must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period. (§2306.6705(5))

(i) For New Construction, Adaptive Reuse or Reconstruction Developments, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating that:

(I) The Development is located within the boundaries of a Unit of General Local Government which does not have a zoning ordinance; and either subclause (II) or (III) of this clause;

(II) The letter must state that the Development is consistent with a local consolidated plan, comprehensive plan, or other local planning document that addresses affordable housing; or

(III) The letter must state that there is a need for affordable housing, if no such planning document exists;

(ii) For New Construction or Reconstruction Developments, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating that:

(I) The Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development; or

(II) The Applicant is in the process of seeking the appropriate zoning and has signed and provided to the Unit of General Local Government a release agreeing to hold the Unit of General Local Government and all other parties harmless in the event that the appropriate zoning is denied. (§2306.6705(5)(B)) Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice. No extensions may be requested for the deadline for submitting evidence of final approval of appropriate zoning.

(iii) For Rehabilitation Developments, documentation of current zoning is required. If the property is currently a non-conforming use as presently zoned, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction which addresses the items in subclauses (I) - (IV) of this clause:

(I) A detailed narrative of the nature of non-conformance;

(II) The applicable destruction threshold;

(III) Owner's rights to reconstruct in the event of damage; and

(IV) Penalties for noncompliance.

(C) Financing Requirements.

(i) Evidence of interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department and any other sources documented in the Application. Any local, state or federal financing identified in this section which restricts household incomes at any AMGI lower than restrictions required pursuant to this chapter must be identified in the "Rent Schedule" and the local, state or federal income restrictions must include corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the Housing Tax Credit LURA and monitored throughout the extended use period. Such evidence must be consistent with the sources and uses of funds represented in the Application and shall be provided in one or more of the following forms described in subclauses (I) - (IV) of this clause:

(I) Financing is in place as evidenced by:

(-a-) A valid and binding loan agreement; and

(-b-) Deed(s) of trust in the name of the Development Owner as grantor; or

(-c-) For TRDO-USDA §515 Developments involving, an executed TRDO-USDA letter indicating TRDO-USDA has received a notification of the tax credit Application; or

(II) Commitment or term sheet for the interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the Development Owner and includes the following as identified in items (-a-) - (-d-) of this subclause:

(-a-) Has been executed by the lender; and

(-b-) A minimum loan term of fifteen (15) years with at least a thirty (30) year amortization; and

(-c-) An expiration date; and

(-d-) All the terms and conditions applicable to the financing including the mechanism for determining the interest rate, if applicable, and the anticipated interest rate, any required Guarantors, and anticipated developer fees paid during construction and anticipated deferred developer fees. Such a commitment may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits; or

(III) Any federal, state or local gap financing, whether of soft or hard debt, must be identified at the time of Application as evidenced by:

(-a-) A term sheet or commitment from the lending agency which clearly describes the amount and terms of the funding must be submitted. If applying for points under §49.9(a)(5) of this chapter then documentation must be submitted as required by the deadlines stated therein; and

(-b-) Evidence of application for funding from another Department program is not required except as indicated on the Uniform Application, as long as the Department funding is on a concurrent funding period with the Application submitted and the Applicant clearly indicates that such an Application has been filed as required by the application checklist in the Tax Credit (Procedures) Manual; and

(IV) If the Development will be financed through more than 5% of Development Owner contributions, provide a letter from an Third Party CPA verifying the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed together with a letter from the Development Owner's bank or banks confirming that sufficient funds are available to the Development Owner. Documentation must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period;

(ii) A written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application; and (§2306.6705(1))

(iii) Provide a term sheet or letter of commitment from a syndicator that, at a minimum, provides an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of Housing Tax Credits requested for allocation to the Development Owner, including pay-in schedules, anticipated developer fees paid during construction and anticipated deferred developer fees, syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis. (§2306.6705(2) and (3))

(D) Tax Assessment and Title. Provide the documents in clauses (i) and (ii) of this subparagraph:

(i) A current valuation report from the county tax appraisal district and documentation of the current total property tax rate for the Development Site (unless the site is located on land that is not subject to federal, state or local property taxes); and

(ii) A copy of:

(I) The current title policy (or title status report if on Tribal Land) including a legal description which shows that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner; or

(II) a current title commitment including a legal description, with the proposed insured matching the name of the Development Owner and the title of the Development Site vested in the name of the seller or lessor as indicated on the sales contract, option or lease;

(III) If the title policy, title status report, or commitment is more than six (6) months old as of the day the Application Acceptance Period closes, then a letter from the title company/Bureau of Indian Affairs indicating that nothing further has transpired on the policy, title status report or commitment must be provided.

(9) Notifications.

(A) Evidence in the form of a certification that the Applicant met the requirements and deadlines identified in clauses (i) - (iii) of this subparagraph. Notification must not be older than three (3) months from the first day of the Application Acceptance Period. (§2306.6705(9)) If evidence of these notifications was submitted with the pre-application for the same Application and satisfied the Department's review of Pre-application Threshold, then no additional notification is required at Application. However, re-notification is required by tax credit Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10%, a total increase of greater than 10% for any given level of AMGI, or a change to the population being served (elderly or general). For Applications submitted for Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), notifications and proof thereof must not be older than three (3) months prior to the date the Volume III of the Application is submitted.

(i) The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site from local elected officials as follows:

(I) No later than the Full Application Neighborhood Organization Request Date as identified in §49.3 of this chapter, the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

(II) If no reply letter is received from the local elected officials by the Full Application Response to Neighborhood Organization Request Date, then the Applicant must certify to that fact in the certification form provided in the Application;

(III) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the submission of the Application, in the certification form provided in the Application.

(ii) No later than the date the Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism e-mail, fax or mail with registered receipt in the format required in the "Application Notification Template" provided in the Application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials, however, are required to notify county officials. Evidence of notification is required in the form of a certification provided in the Application, although it is encouraged that Applicants retain proof of delivery of the notifications, to the persons or entities prescribed in subclauses (I) - (IX) of this clause, in the event that the Department requires proof of notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the Application is submitted.

(I) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site as identified in clause (i)(III) of this subparagraph;

(II) Superintendent of the school district containing the Development;

(III) Presiding officer of the board of trustees of the school district containing the Development;

(IV) Mayor of the Governing Body of any municipality containing the Development;

(V) All elected members of the Governing Body of any municipality containing the Development;

(VI) Presiding officer of the Governing Body of the county containing the Development;

(VII) All elected members of the Governing Body of the county containing the Development;

(VIII) State senator of the district containing the Development; and

(IX) State representative of the district containing the Development.

(iii) Each such notice must include, at a minimum, all of the following:

(I) The Applicant's name, address, individual contact name and phone number;

(II) The Development name, address, city and county;

(III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs (TDHCA);

(IV) Statement of whether the Development proposes New Construction, reconstruction, Adaptive Reuse or Rehabilitation;

(V) The type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.) and population being served (family or elderly);

(VI) The approximate total number of Units and approximate total number of low-income Units;

(VII) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate percentage of Units that are market rate;

(VIII) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Application, which are subject to change as annual changes in the area median income occur; and

(IX) The expected completion date if credits are awarded.

(B) Signage on Property or Alternative. A Public Notification Sign shall be installed on the Development Site prior to the date the Application is submitted unless prohibited by local ordinance or code or restrictive covenants. Scattered site Developments must install a sign on each non-contiguous Development Site. The sign must identify that a residential development is being proposed and must provide contact information for the Applicant in the form of a phone number or web address where they can obtain more information. The Applicant shall make reasonable efforts to maintain the sign on the site until the day that the Board takes final action on the Application for the Development. In areas where the Public Notification Sign is prohibited by local ordinance or code or restrictive covenant, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall, mail written notification to those addresses described in either clause (i) or (ii) of this subparagraph. This written notification must include the information otherwise required for the sign as provided in the Application. The final Application must include a map of the proposed Development Site and mark the distance required by clause (i) or (ii) of this subparagraph, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to;

an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If Public Notification Sign is prohibited by local ordinance or code or restrictive covenant, evidence of the applicable ordinance or code or restrictive covenant must be submitted in the Application.

(i) All addresses required for notification by local zoning notification requirements. For example, if the local zoning notification requirement is notification to all those addresses within 200 feet, then that would be the distance used for this purpose; or

(ii) For Developments located in communities that do not have zoning, communities that do not require a zoning notification or those located outside of a municipality, all addresses located within 1,000 feet of any part of the proposed Development Site.

(C) If any of the Units in the Development are occupied at the time of Application, then the Applicant must certify that it has notified each tenant at the Development of all the information otherwise required on the sign, including the Department's public hearing schedule for comment on submitted Applications.

(10) Development's Proposed Ownership Structure.

(A) A chart which clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.

(B) Each Applicant, Development Owner, Developer or Guarantor, or any entity shown on an organizational chart as described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, shall provide for entities that are not yet formed but are to be formed either in or outside of the state of Texas, a certificate of name reservation of the entity name from the Texas Office of the Secretary of State.

(C) Evidence that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities and publicly traded corporations are required to submit documentation for the entities involved; documentation for individual board members and executive directors is required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. The 2011 versions of these forms, as required in the Uniform Application, must be submitted. Units of General Local Government are also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Person. All participation in any TDHCA funded or monitored activity, including non-housing activities, must be disclosed.

(D) The experience certification, as further described under paragraph (4) of this section, is submitted that reflects a Person that appears in the organizational chart provided in subparagraph (A) of this paragraph.

(11) Development's Projected Income and Operating Expenses.

(A) All Developments must provide a 30-year proforma estimate of operating expenses and supporting documentation used to generate projections (operating statements from comparable properties);

(B) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided, which at a minimum identifies the source and annual amount of the funds, the number of Units receiving the funds, and the term and expiration date of the contract or other agreement; (§2306.6705(4))

(C) Applicant must provide documentation from the source of the "Utility Allowance" estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate;

(D) Occupied Developments undergoing Rehabilitation must also submit the items described in clauses (i) - (iv) of this subparagraph;

(i) The items in subclauses (I) and (II) of this clause are required unless the current property owner is unwilling to provide the required documentation. In that case, submit a signed statement as to the Applicant's inability to provide all documentation as described:

(I) Submit at least one of the following:

(-a-) Historical monthly operating statements of the subject Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(-b-) The two (2) most recent consecutive annual operating statement summaries;

(-c-) The most recent consecutive six (6) months of operating statements and the most recent available annual operating summary;

(-d-) All monthly or annual operating summaries available; and

(II) A rent roll not more than six (6) months old as of the first day the Application Acceptance Period, that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;

(ii) A written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iii) For Qualified Elderly Developments, identification of the number of existing tenants qualified under the target population elected under this title;

(iv) A relocation plan outlining relocation requirements and a budget with an identified funding source; and (§2306.6705(6))

(v) If applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))

(12) Applications involving Nonprofit General Partners and Qualified Nonprofit Developments. All Applications under the State Housing Credit Ceiling involving a nonprofit General Partner, regardless of whether the Nonprofit Set-Aside was selected, in which the Development will receive some financial or tax benefit for the involvement of the nonprofit General Partner, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609.

(§2306.6706) Tax-Exempt Bond Applications only need to submit the information in subparagraphs (A) and (B) of this paragraph.

(A) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity;

(B) The "Nonprofit Participation Exhibit" as provided in the Application;

(C) A Third Party legal opinion stating:

(i) That the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion; and

(ii) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside and the basis for that opinion. Eligibility is contingent upon the non-profit organization Controlling the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, the Qualified Nonprofit Organization must be the controlling managing member; and otherwise meet the requirements of §42(h)(5) of the Code; and

(iii) That one of the exempt purposes of the nonprofit organization is to provide low-income housing; and

(iv) That the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board; and

(v) That the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement; and

(D) A copy of the nonprofit organization's most recent audited financial statement; and

(E) Evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(i) In this state, if the Development is located in a Rural Area; or

(ii) Not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(13) Authorization to Release Credit Information. The authorization to release credit information must be unbound and clearly labeled. An Authorization to Release Credit Information" must be completed and signed for any General Partner, Developer or Guarantor and any Person that has an ownership interest of 10% or more in the Development Owner, General Partner, Developer, or Guarantor. Nonprofit entities, public housing authorities and publicly traded corporations are only required to submit documentation for the entities involved; documentation for individual board members and executive directors is not required for this exhibit.

(14) Supplemental Threshold Reports. The Third Party reports as required in this section must meet the requirements stated in subparagraphs (A) - (F) of this paragraph. The entire report must be submitted on or before the Third Party Report Delivery Date as identified in §49.3 of this chapter. If the entire report is not received by that time, the Application will be terminated and will be removed from consideration. A searchable electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name, and Development location are required.

(A) A Phase I Environmental Site Assessment (ESA) report (required for all Developments):

(i) Prepared by a qualified Third Party;

(ii) Dated not more than twelve (12) months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Development is more than twelve (12) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated letter or updated report dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report;

(iii) Prepared in accordance with §1.35 of this title (relating to Environmental Site Assessment Rules and Guidelines);

(iv) Developments whose funds have been obligated by TRDO-USDA will not be required to supply this information; however, the Applicants of such Developments are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements; and

(v) If the report includes a recommendation that an additional assessment be performed then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(B) A comprehensive Market Analysis report (required for all Developments):

(i) Prepared by a Third Party Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §1.33 of this title (relating to Market Analysis Rules and Guidelines);

(ii) Dated not more than six (6) months prior to the first day of the Application Acceptance Period. In the event that a Market Analysis is more than six (6) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated Market Analysis from the Person or organization which prepared the initial report; however the Department will not accept any Market Analysis which is more than twelve (12) months old as of the first day of the Application Acceptance Period;

(iii) Prepared in accordance with the methodology prescribed in §1.33 of this title; and

(iv) For Applications in the TRDO-USDA Set-Aside proposing acquisition and Rehabilitation with residential structures at or above 80% occupancy at the time of Application Submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §1.34 of this title (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however the Department may request additional information as needed. (§2306.67055, §42(m)(1)(A)(iii))

(C) A Property Condition Assessment (PCA) report (required for Rehabilitation, Reconstruction and Adaptive Reuse Developments):

(i) Prepared by a qualified Third Party;

(ii) Dated not more than six (6) months prior to the first day of the Application Acceptance Period;

(iii) Prepared in accordance with §1.36 of this title (relating to Property Condition Assessment Guidelines); and

(iv) For Developments which require a capital needs assessment from TRDO-USDA, the capital needs assessment may be substituted and may be more than six (6) months old, as long as TRDO-USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §1.36 of this title.

(D) An appraisal report (required for Rehabilitation Developments and Identity of Interest transactions pursuant to §1.34 of this title):

(i) Prepared by a qualified Third Party;

(ii) Dated not more than six (6) months prior to the first day of the Application Acceptance Period. In the event that an appraisal is more than six (6) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated appraisal from the Person or organization which prepared the initial report; however the Department will not accept any appraisal which is more than twelve (12) months old as of the first day of the Application Acceptance Period;

(iii) Prepared in accordance with the §1.34 of this title; and

(iv) For Developments that require an appraisal from TRDO-USDA, the appraisal may be more than six (6) months old, as long as TRDO-USDA has confirmed in writing that the existing appraisal is still acceptable.

(E) Inserted at the front of each of these reports must be a transmittal letter from the individual preparing the report that states that the Department is granted full authority to rely on the findings and conclusions of the report. The transmittal letter must also state the report preparer has read and understood the Department rules specific to the report found at §§1.33 - 1.36 of this title.

(F) All Applicants acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the report. The Department may determine from time to time that information not required in the Department's Rules and Guidelines will be relevant to the Department's evaluation of the need for the Development and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the report provider or revisions to the report to meet this need. In instances of non-response by the report provider, the Department may substitute in-house analysis.

§49.9. Selection Criteria.

(a) All Applications will be scored and ranked using the point system identified in this subsection. Unless otherwise stated, do not round calculations. Points other than those provided in paragraphs (2) and (6) of this subsection will not be awarded unless requested in the Self Scoring Form. All Applications, with the exception of TRDO-USDA Applications, must receive a final score totaling a minimum of 118, not including any points awarded or deducted pursuant to paragraphs (2) and (6) of this subsection to be eligible for an allocation of Housing Tax Credits. Maximum Total Points: 225.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) Applications may qualify to receive a maximum of 28 points for this item. Receipt of feasibility points under this paragraph does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division, and, conversely, a Development may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive all possible points under this paragraph. Evidence will include the following in addition to the commitment letter required under subsection §49.8(8)(C) of this chapter (relating to Threshold Criteria). To qualify for 20 points the supporting financial data shall include:

(A) A fifteen (15) year pro forma prepared by the permanent or construction lender:

(i) Specifically identifying each of the first five (5) years and every fifth year thereafter;

(ii) Specifically identifying underlying assumptions including, but not limited to general growth factor applied to income and expense; and

(iii) Indicating that the Development maintains a minimum 1.15 debt coverage ratio throughout the initial fifteen (15) years proposed for all third party lenders that require scheduled repayment; and

(B) A statement in the commitment letter, or other form deemed acceptable by the Department, indicating that the lender's assessment finds that the Development will be feasible for fifteen (15) years.

(C) For Developments maintaining existing financing from TRDO-USDA, a current note balance must be provided or other form of documentation of the existing loan deemed acceptable by the Department to meet the requirements of this section.

(D) To qualify for an additional 8 points, the commitment letter from the permanent or construction lender must indicate that they have reviewed the Applicant's financial position and credit worthiness and have determined that the Applicant meets the financial liquidity or net worth standards that such lender would require in connection with the proposed Development. Furthermore, the letter must describe those standards that such lender would require in connection with the proposed Development. If at any time the Application is under consideration by the Department and the lender changes, the Applicant must provide a subsequent letter from the new lender addressing net worth and liquidity under the new lender's standards in order to remain eligible for the additional 8 points.

(2) Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) Points will be awarded based on written statements of support or opposition from Neighborhood Organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development Site. It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the process utilized for notification purposes under §49.8(9) of this chapter if the organization provides the information and documentation required in subparagraphs (A) and (B) of this paragraph. It is also possible that Neighborhood Organizations that were initially identified as appropriate organizations for purposes of the notification requirements will subsequently be determined by the Department not to meet the requirements for scoring. If an organization is determined not to be qualified under this paragraph, the organization may qualify under paragraph (11)(B) of this subsection.

(A) Submission Requirements. Each Neighborhood Organization may submit the form as included in the QCP Neighborhood Information Packet that represents the organization's input. In order to receive a point score, the form must be received, by the Department, or postmarked, if mailed by the U.S. Postal Service, no later than the Quantifiable Community Participation Delivery Date as identified in §49.3 of this chapter (relating to Program Calendar).

Forms received after the deadline will be summarized for the Board's information and consideration, but will not affect the score for the Application. The form must:

(i) State the name and location of the proposed single Development;

(ii) Certify that the letter is signed by two officials or board members of the Neighborhood Organization with the authority to sign on behalf of the Neighborhood Organization, and include:

(I) the street and/or mailing addresses for the signers of the letter;

(II) day and evening phone numbers for the signers of the letter;

(III) email addresses and/or facsimile numbers for the signers of the letter and one additional contact for the organization; and

(IV) a written description and map of the organization's geographical boundaries;

(iii) Certify that the organization has boundaries, and that the boundaries in effect on or before the Full Application Delivery Date identified in §49.3 of this chapter contain the proposed Development Site;

(iv) Certify that the organization meets the definition of "Neighborhood Organization"; defined as an organization of persons living near one another within the organization's defined boundaries that contain the proposed Development Site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood (§2306.004(23-a)). For purposes of this section, "persons living near one another" means two (2) or more separate residential households. "Neighborhood Organizations" include homeowners associations, property owners associations, and resident councils in which the council is commenting on the Rehabilitation or Reconstruction of the property occupied by the residents. "Neighborhood Organizations" do not include broader based "community" organizations;

(v) Include documentation showing that the organization is on record as of the Full Application Delivery Date with the state or county in which the Development is proposed to be located. The receipt of the QCP form that meets the requirements of this subsection and further outlined in the QCP Neighborhood Information Packet will constitute being on record with the State. The Department is permitted to issue an Administrative Deficiency notice for this registration process and if satisfied, the organization will still be deemed to be timely placed on record with the state;

(vi) A Neighborhood Organization must take reasonable measures to provide notice to persons eligible to join or participate in the affairs of the organization of that right. Examples of reasonable measure would be giving notice in a newsletter distributed where residents will likely see them; posting notice (in compliance with local signage requirements); or distribution flyers. The Department may exclude from consideration Neighborhood Organizations that do not comply with their own bylaws or other constitutive or governing documents;

(vii) While not required, the organization is encouraged to hold a meeting to which all the members of the organization are invited to consider whether the organization should support, oppose, or be neutral on the proposed Development, and to have the membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to invite the Developer or Applicant to this meeting; and

(viii) The form from the Neighborhood Organization for the purposes of this subsection must be submitted to the Department by the Neighborhood Organization and not the Applicant. This documentation must be submitted independent of the Application. Furthermore, while the Applicant may assist the Neighborhood Organization in the Administrative Deficiency process or any other request from the Department as it relates to this item, the Administrative Deficiency Notice from the Department will be issued to the Neighborhood Organization with a copy to the Applicant; however, the Deficiency response must be submitted to the Department directly by the Neighborhood Organization.

(B) Scoring. The input must clearly and concisely state each reason for the Neighborhood Organization's support for or opposition to the proposed Development.

(i) The score awarded for each letter for this exhibit will be based on the following:

(I) Support letters (must establish at least one reason for support) will receive 24 points; or

(II) Letters that do not establish a reason for support or opposition or that are unclear will be considered ineligible and scored as neutral (+12 points);

(III) Opposition letters (must state at least one reason for opposition) will receive 0 points;

(IV) If an Application receives multiple eligible letters, the average score of all eligible letters will be applied to the Application.

(ii) The final score will be determined by the Executive Director. The Department may investigate a matter and contact the Applicant and Neighborhood Organizations for more information. The Department may consider any relevant information specified in letters from other Neighborhood Organizations regarding a Development in determining a score.

(iii) The Department highly values quality public input addressed to the merits of a Development. Input that identifies matters that are specific to the neighborhood, the proposed site, the proposed Development, or Developer are valued. If a proposed Development is permitted by the existing or pending zoning or absence of zoning, concerns addressed by the allowable land use that are related to any multifamily development may generally be considered to have been addressed at the local level through the land use planning process. Input concerning positive efforts or the lack of efforts by the Applicant to inform and communicate with the neighborhood about the proposed Development is highly valued. If the Neighborhood Organization refuses to communicate with the Applicant the efforts of the Applicant will not be considered negative. Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered.

(3) The Income Levels of Tenants of the Development. (§§2306.111(g)(3)(B); 2306.111(g)(3)(E); 2306.6710(b)(1)(C); 2306.6710(e); and §42(m)(1)(B)(ii)(I)) Applications may qualify to receive up to 22 points for qualifying under only one of subparagraphs (A) - (C) of this paragraph. To qualify for these points, the household incomes must not be higher than permitted by the AMGI level (must round to the next highest whole Unit, no less than one Unit). The Development Owner, upon making selections for this exhibit, will set aside Units at the levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. These income levels require corresponding

rent levels that do not exceed 30% of the income limitation in accordance with §42(g), Internal Revenue Code.

(A) 22 points if at least 40% of the Low-Income Units in the Development are set-aside with incomes at or below a combination of 50% and 30% of AMGI in which at least 5% of the Low-Income Units are at or below 30% of AMGI; or

(B) 20 points if at least 60% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI.

(C) 18 points if at least 10% of the Low-Income Units in the Development are set-aside with incomes at or below 30% of AMGI; or

(4) The Size and Quality of the Units (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)). Applications may qualify to receive up to 20 points under both subparagraphs (A) and (B) of this paragraph.

(A) Size of the Units (6 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Six points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), Developments receiving funding from TRDO-USDA, or Developments proposing Single Room Occupancy without meeting these square footage minimums if requested in the Self Scoring Form. The square feet of all of the Units in the Development, for each type of Unit, must be at least the minimum noted in clauses (i) - (v) of this subparagraph. Changes to an Application during any phase of the review process that decreases the square footage below the minimums noted in clauses (i) - (v) of this subparagraph, will be re-evaluated and may result in a reduction of the Application score.

(i) 600 square feet for an Efficiency Unit;

(ii) 700 square feet for a one Bedroom Unit that is not in a Qualified Elderly Development; 600 square feet for a one Bedroom Unit in a Qualified Elderly Development;

(iii) 950 square feet for a two Bedroom Unit that is not in a Qualified Elderly Development; 750 square feet for a two Bedroom Unit in a Qualified Elderly Development;

(iv) 1,050 square feet for a three Bedroom Unit; and

(v) 1,250 square feet for a four Bedroom Unit.

(B) Quality of the Units (14 points). Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in clauses (i) - (xvi) of this subparagraph. Applications involving scattered site Developments must have all of the Units located with a specific amenity to count for points. Applications involving Rehabilitation (excluding Reconstruction) or Single Room Occupancy may receive 1.5 points for each point item (do not round).

(i) Covered entries (1 point);

(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);

(iii) Microwave ovens (1 point);

(iv) Self-cleaning or continuous cleaning ovens (1 point);

(v) Refrigerator with icemaker (1 point);

(vi) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets - does not need to be in the Unit but must be on the property site (1 point);

(vii) Laundry equipment (washers and dryers) for each individual Unit including a front loading washer and dryer in required UFAS compliant Units (3 points);

(viii) Thirty (30) year architectural shingle roofing (1 point);

(ix) Covered patios or covered balconies (1 point);

(x) Covered parking (including garages) of at least one covered space per Unit (2 points);

(xi) 100% masonry on exterior (3 points) (Applicants may not select this item if clause (xii) of this subparagraph is selected);

(xii) Greater than 75% masonry on exterior (1 point) (Applicants may not select this item if clause (xi) of this subparagraph is selected);

(xiii) Structural Insulated Panel construction with wall insulation at a minimum of R-20 and roof at a minimum R-30 (3 points);

(xiv) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (3 points);

(xv) 14 SEER HVAC (or greater) or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (3 points); or

(xvi) High Speed Internet service to all Units (2 points).

(5) The Commitment of Development Funding by Units of General Local Government. (§2306.6710(b)(1)(E)) Applications may qualify to receive up to 18 points under this paragraph.

(A) Submission Requirements. Evidence of the following must be submitted in accordance with the application checklist in the Tax Credit (Procedures) Manual.

(i) The loans, grant(s) or in-kind contribution(s) must be attributed to the total number of Units in the Development.

(ii) An Applicant may submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form.

(iii) An Applicant may substitute any source in response to an Administrative Deficiency Notice or after the Application has been submitted to the Department.

(iv) A loan does not qualify as an eligible source unless it has a minimum term of the later of 1-year or the Placed in Service date, and the interest rate must be at the Applicable Federal Rate (AFR) or below (at the time of loan closing).

(v) In-kind contributions such as donation of land, tax exemptions, or waivers of fees such as building permits, water and sewer tap fees, or similar contributions are only eligible for points if the in-kind contribution provides a tangible economic benefit that results in a quantifiable Total Housing Development Cost reduction to benefit the Development. The quantified value of the Total Housing Development Cost reduction may only include the value during the period the contribution or waiver is received and/or assessed. Donations of land must be under the control of the Applicant, pursuant to §49.8(8)(A) of this chapter to qualify. The value of in-kind contributions may only include the time period between award or August 2, 2011 and the De-

velopment's Placed in Service date, with the exception of contributions of land. The full value of land contributions, as established by the appraisal required pursuant to clause (viii) of this subparagraph will be counted. Contributions in the form of tax exemptions or abatements may only count for points if the contribution is in addition to any tax exemption or abatement required under statute.

(vi) To the extent that a Notice of Funding Availability (NOFA) is released and funds are available, funds from TDHCA's HOME Investment Partnerships (HOME) Program will qualify if a resolution, dated on or before the date the Application Acceptance Period ends, is submitted with the Application from the Governing Body of the Unit of General Local Government authorizing the Applicant to act on behalf of the Governing Body of the Unit of General Local Government in applying for HOME Funds from TDHCA for the particular Application. TDHCA's HOME funds may be substituted for a source originally submitted with the Application, provided the HOME funds substituted are from a NOFA released after the Application Acceptance Period ends and a resolution is submitted with the substitution documentation from the Governing Body of the Unit of General Local Government authorizing the Applicant to act on behalf of the Unit of General Local Government in applying for HOME Funds from TDHCA for the particular Application.

(vii) Development based rental subsidies may qualify under this section if evidence of the remaining value of the contract remaining as of December 31st of the application year is submitted from the Unit of General Local Government. The value of the contract does not include past subsidies.

(viii) Evidence to be submitted with the Application must include a copy of the commitment of funds; a copy of the application to the funding entity; or a letter from the funding entity indicating that the award of funds with respect to the funding cycle for which the Applicant intends to apply for will be made by August 1, 2011. This letter does not have to confirm that the funds will be awarded to the subject Application, but that awards with respect to the Applications under consideration for the funding cycle will be announced by the previously stated deadline. A statement from the Applicant with respect to the loan amount to be applied for and the specific terms requested or to be requested must be submitted. For in-kind contributions, evidence must be submitted in the Application from Unit of General Local Government substantiating the value of the in-kind contributions. For in-kind contributions of land, evidence of the value of the contribution must be in the form of an appraisal.

(ix) If not already provided, at the time the executed Commitment is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the Governing Body of the Unit of General Local Government for the Development Funding to the Department. If the funding commitment from the Unit of General Local Government has not been received by the date the Department's Commitment is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the Unit of General Local Government's Development Funding, the Commitment will be rescinded and the credits reallocated.

(x) Funding commitments from a Unit of General Local Government will not be considered final unless the Unit of General Local Government attests to the fact that any funds committed were not first provided to the Unit of General Local Government by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Unit of General Local Government or subsidiary.

(B) Scoring. Points will be determined on a sliding scale based on the amount of funds to be made available to the Development on a per unit basis, based on the total number of Units in the Development. Do not round for the following calculations. The "total contribution" is the total combined value of qualifying loan(s), grants or in-kind contributions from a Unit of General Local Government pursuant to subparagraph (A) of this paragraph.

(i) A total contribution of at least $900 (or $450 for Rural Developments or Developments located in non-participating jurisdictions) per unit receives 6 points; or

(ii) A total contribution of at least $2,250 (or $1,125 for Rural Developments or Developments located in non-participating jurisdictions) per unit receives 12 points;

(iii) A total contribution equal to or greater than $4,500 (or $2,250 for Rural Developments or Developments located in non-participating jurisdictions) per unit receives 18 points.

(6) Community Support from State Representative or State Senator. (§2306.6710(b)(1)(F) and §2306.6725(a)(2)) Applications may qualify to receive 14 points for this item. Letters must identify the specific Development, must clearly state support for or opposition to the specific Development and must be from the State Representative or State Senator that represents the district containing the proposed Development Site. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative or Senator on or before the Input from State Senator or Representative Delivery Date as identified in §49.3 of this chapter. A State Representative or State Senator may withdraw (in writing), but may not change or replace a letter that is submitted by the April 1st deadline on or before the Withdraw Deadline for State Senator or Representative Letters as identified in §49.3 of this chapter but may not submit a new letter. After the Withdraw Deadline such letters may not be withdrawn. The previous position of support or opposition that is withdrawn will be scored as neutral (0 points). State Representatives or Senators to be considered are those State Representatives or Senators in office at the time the Application is submitted. Letters of support from State Representatives or Senators that do not represent the district containing the proposed Development Site will not qualify for points under this exhibit. Support letters are +14 points; neutral letters, or letters that do not specifically refer to the Development, will receive 0 points; Opposition letters (must state reason for opposition) will receive -14 points. If one letter is received in support and one letter is received in opposition the score would be 0 points. A letter that does not directly express support but expresses it indirectly by inference, (i.e. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(7) The Rent Levels of the Units. (§2306.6710(b)(1)(G)) Applications may qualify to receive up to 12 points for this item provided the Application has qualified for points under paragraph (3) of this subsection, relating to Income Levels of Tenants of the Development. An Application may qualify for points under this subsection by providing additional Low-Income Units at 30% and 50% of AMGI (must round up to the next whole Unit, not less than one Unit), as follows:

(A) An Application may receive 2 points for every 5% of Low-Income Units at rents and incomes at 50% of AMGI; or

(B) An Application may receive 6 points for every 2.5% of Low-Income Units at rents and incomes at 30% of AMGI.

(8) The Cost of the Development by Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) Applications may qualify to receive 10 points for this item. For this exhibit, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of Net Rentable Area (NRA). For the purposes of this paragraph only, if a building is in a Qualified Elderly Development with an elevator or a high rise building with four or more stories serving any population, the NRA may include elevator served interior corridors. If the proposed Development is a Single Room Occupancy Development, the NRA may include elevator served interior corridors and may include up to 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments qualify for 10 points if their costs do not exceed $95 per square foot for Qualified Elderly, single family design, transitional, and Single Room Occupancy Developments (transitional housing for the homeless and Single Room Occupancy units as provided in §42(i)(3)(B)(iii) and (iv) of the Code), unless located in a "First Tier County" in which case their costs do not exceed $97 per square foot; and $85 for all other Developments, unless designated as "First Tier" by the Texas Department of Insurance, in which case their costs do not exceed $87 per square foot. The First Tier counties are identified in the Tax Credit (Procedures) Manual. There are also specifically designated First Tier communities in Harris County that are east of State Highway 146, and evidence in the Application must include a map with the Development Site designated clearly within the community. These communities are Pasadena, Morgan's Point, Shoreacres, Seabrook and La Porte.

(9) Tenant Services. (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) Applications may qualify to receive up to 8 points for this item. The Applicant must certify that the Development will provide a combination of supportive services appropriate for the proposed tenants. The provision of supportive services will be included in the LURA as selected from the list of services identified in this paragraph. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided. The same service may not be used for more than one scoring item. Applications will be awarded points for selecting services listed in subparagraphs (A) - (U) of this paragraph:

(A) Joint use library center, as evidenced by a written agreement with the local school district (2 points);

(B) Weekday afterschool program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics (i.e. teen dating violence, drug prevention, team-building, internet dangers, stranger danger, etc.)) (3 points);

(C) Daily transportation (2 point);

(D) Counseling services (only Supportive Housing Developments eligible) (1 point);

(E) Food pantry/common household items (only Supportive Housing Developments eligible) (1 point);

(F) GED preparation classes (shall include a certified instructor providing on-site coursework and exam) (2 points);

(G) English as a second language classes (shall include a certified instructor providing on-site coursework and exam) (2 points);

(H) Quarterly financial planning courses (i.e. home-buyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-Rom course is not acceptable (1 point);

(I) Annual health fair (1 point);

(J) Quarterly health and nutritional courses (1 point);

(K) Organized team sports programs or youth programs (1 point);

(L) Scholastic tutoring (1 point);

(M) Notary Public Services during regular business hours (§2306.6710(b)(3)) (1 point);

(N) Weekly exercise classes (2 points);

(O) Monthly arts and crafts (1 point);

(P) Annual income tax preparation services (1 point);

(Q) Monthly transportation to community/social events (i.e. lawful gaming sites, mall trips, community theatre, bowling, organized tours, etc.) (1 point); and

(R) Monthly on-site social events (i.e. potluck dinners, game night, etc.) (1 point);

(S) Specific and pre-approved caseworker services for seniors and Persons with Disabilities (1 point);

(T) Home chore services (such as trash removal and quarterly preventative maintenance including light bulb replacement and hot water heater and other appliance check) for seniors and Persons with Disabilities (1 point);

(U) 1 point for any other programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; or any other services approved in writing by the Department.

(10) Declared Disaster Areas. (§2306.6710(b)(1)) Applications may receive 7 points, if by the Full Application Delivery Date as identified in §49.3 of this chapter or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared a disaster under Texas Government Code §418.014.

(11) Community Input other than Quantifiable Community Participation. If an Application was awarded 18 or 12 points under paragraph (2) of this subsection, then that Application may receive up to 6 points for letters that qualify for points under subparagraph (A), (B) or (C) of this paragraph. An Application may not receive points under more than one of the subparagraphs (A) - (C) of this paragraph. All letters must be submitted within the Application. At no time will the Application receive a score lower than zero for this item.

(A) An Application may receive two points (maximum of 6 points) for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. The community or civic organization must provide

some documentation of its existence in the community in which the Development is located including, but not limited to, listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development will not be counted. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), taxing entities or educational activities. Organizations that were created by a governmental entity or derive their source of creation from a governmental entity do not qualify under this item. For purposes of this item, educational activities include school districts, trade and vocational schools, charter schools and depending on how characterized could include day care centers; a PTA or PTO would qualify. Should an Applicant elect this option and the Application receives letters in opposition, then 2 points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community.

(B) An Application may receive 6 points for a letter of support, from a property owners association created for a master planned community whose boundaries include the development site that does not meet the requirements of a Neighborhood Organization for points under paragraph (2) of this subsection.

(C) An Application may receive 6 points for a letter of support from a Special Management District, whose boundaries, as of the Full Application Delivery Date as identified in §49.3 of this chapter, include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.

(12) Housing Needs Characteristics. (§42(m)(1)(C)(ii)) Applications may qualify to receive up to 6 points (if the Development Site is located in a Place with a certain Affordable Housing Need Score). Each Application may receive a score if correctly requested in the Self Score form based on objective measures of housing need in the Place where the Development is located. This Affordable Housing Need Score for each Place will be published in the 2011 Site Demographic Characteristics Report. For purposes of this item a Place is defined as the geographic area contained within the boundaries of:

(A) An incorporated place; or

(B) Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census. For Developments located outside the boundaries of an incorporated place or CDP, the Development shall take up the Place characteristics of the incorporated place or CDP whose boundary is nearest to the Development Site.

(13) Community Revitalization, (§42(m)(1)(C)(iii)) Historic Preservation or Rehabilitation. Applications may qualify to receive 6 points under subparagraphs (A) - (C) of this paragraph or 3 points under subparagraph (D) of this paragraph.

(A) The Development includes the use of an Existing Residential Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. Evidence of the Community Revitalization Plan must be in the form of a letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan or only if the Community Revitalization Plan has specific boundaries, a copy of the plan, adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan; or

(B) The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including Reconstruction) or Adaptive Reuse. The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building. Evidence will include proof of the historic designation from the appropriate Governmental Entity.

(C) Rehabilitation (includes Reconstruction). Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), solely Reconstruction (excluding New Construction of non-residential buildings), or solely Adaptive Reuse;

(D) The Development is New Construction and is proposed to be located in an area that is part of a Community Revitalization Plan (3 points).

(14) Pre-application Participation Incentive Points. (§2306.6704) Applicants that submitted a pre-application during the Pre-Application Acceptance Period and meet the requirements of this paragraph will qualify to receive 6 points for this item. To be eligible for these points, the Application must:

(A) Be for the identical Development Site, or reduced portion of the Development Site as the proposed Development Site under control in the pre-application;

(B) Have met the Pre-application Threshold Criteria;

(C) Include, as part of this exhibit, a certification signed by the principal(s) that signed the site control at pre-application confirming they are the same principal(s) at Application.

(D) Be serving the same target population (general or elderly) as in the pre-application;

(E) Be applying for the same Set-Asides as indicated in the pre-application (Set-Asides can be dropped between pre-application and Application, but no Set-Asides can be added); and

(F) Be awarded by the Department an Application score that is not more than 5% greater or less than the number of points awarded by the Department at pre-application, with the exclusion of points for support and opposition under paragraphs (2), (6), and (11) of this subsection. The Application score used to determine whether the Application score is 5% greater or less than the number of points awarded at pre-application will also include all point losses under §49.7(a)(2)(A) of this chapter (relating to Administrative Deficiencies). An Applicant must choose, at the time of Application either clause (i) or (ii) of this subparagraph:

(i) To request the pre-application points and have the Department cap the Application score at no greater than the 5% increase regardless of the total points accumulated in the scoring evaluation. This allows an Applicant to avoid penalty for increasing the point structure outside the 5% range from pre-application to Application; or

(ii) To request that the pre-application points be forfeited and that the Department evaluate the Application as requested in the Self-Score Form.

(15) Green Building Initiatives. Application may qualify to receive up to 6 points for this item provided that points under this paragraph are not be requested for the same items utilized for points under §49.8(5)(A) of this chapter. Rehabilitation Developments (excluding Reconstruction) and Single Room Occupancy Developments will receive 1.5 points for each point requested under this paragraph.

(A) Development Energy Savings (1 point for each item):

(i) Collected water (at least 50%) for irrigation purposes;

(ii) Selection of native trees and plants that are appropriate to the site's soils and microclimate; or

(B) Tenant Energy Savings (2 points for each item):

(i) If the glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west-facing walls; and the east-west axis of the building is within 15 degrees of due east-west;

(ii) If the east-west axis of the building oriented within 15 degrees of due east-west utilizes a narrow floor plate (less than 40 feet), and single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation;

(iii) Solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, (applies only to rehabilitation where windows are not replaced with Energy Star rated windows);

(iv) 100% of HVAC condenser units are located so they are fully shaded 75% of the time during summer months (May through August);

(v) Install low-floor or high efficiency toilets that exceed State requirements;

(vi) Install bathroom lavatory faucets, showerheads and kitchen faucets that exceed the State standard at the time of Application. All fixtures throughout development must meet the standard. Rehabilitation Developments may install compliant faucet aerators instead of replacing entire faucets; or

(vii) Provide Solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire Development;

(viii) Sub-metered utility meters on Rehabilitation Developments without existing sub-meters;

(ix) If the Development includes Energy-Star qualified windows and glass doors exclusively; and insulation, and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and Energy Star rated HVAC and domestic hot water heaters, and insulation that exceeds Energy Star standards;

(x) If the Development by demonstrating a certified HERS score of 85 or lower;

(xi) Thermally and draft efficient doors (SHGC of 0.40 or lower (for doors with glass) and U-value specified by climate zone according to the 2006 IECC) are used;

(xii) On-site photovoltaic panels or wind-driven turbines for generating at least 5kW of electricity that are incorporated into the engineered structural design of the roof(s) and neither of which protrude from any roof structure by more than 8 feet and are designed and wired to supplement the Development's electric power. Photographs and data sheets of the proposed equipment must be submitted with the Application; or

(xiii) Recycling service provided throughout the compliance period.

(C) Other Green Features/Indoor Health (1 point for each item):

(i) Renewable materials, provide at least one of the following: bamboo flooring, wool carpet, linoleum flooring, straw board cabinetry, poplar OSB, or cotton batt insulation;

(ii) Healthy flooring, provide at least one of the following for 50% of flooring. Finished concrete or ceramic tile resilient flooring material that is Floor Score Certified, applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty; or

(iii) Healthy finish materials, use paints, stains, adhesives and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standards.

(D) LEED (Leadership in Energy and Environmental Design) Certification. (6 points) If at the time of Cost Certification a LEED Certification (Certified, Silver, Gold or Platinum levels) for the Development is obtained then the maximum points allowed under this paragraph will be awarded and none of the green building amenities selected under this paragraph will need to be substantiated. Conversely, if at the time of Cost Certification a LEED Certification has not been obtained then the Applicant will be required to prove up 6 points under this subparagraph.

(16) Development Location. (§2306.6725(a)(4); §42(m)(1)(C)(i)) Applications may qualify to receive 4 points under this item. Evidence must not be more than six (6) months old from the first day of the Application Acceptance Period. An Application may only receive points under one of the subparagraphs (A) - (F) of this paragraph.

(A) The Development is located in a census tract which has a median family income (MFI), as published by the United States Bureau of the Census (U.S. Census) that is higher than the median family income for the county in which the census tract is located. This comparison shall be made using the most recent data available to the Department as of the date the Application Round opens the year preceding the applicable program year. Developments eligible for these points must submit evidence documenting the median income for both the census tract and the county. These Census Tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.

(B) The proposed Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and is proposed to be located in an elementary school attendance zone that has an academic rating of "Exemplary" or "Recognized," or comparable rating if the rating system changes. An elementary attendance zone does not include magnet school or elementary schools with district-wide possibility of enrollment or no defined attendance zones. The date for consideration of the attendance zone is that in existence as of the opening date of the Application Round and the academic rating is the most current rating determined by the Texas Education Agency as of that same date. (§42(m)(1)(C)(vii))

(C) The proposed Development will expand affordable housing opportunities for low-income families with children outside of poverty areas. This must be demonstrated by showing that the Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and that the census tract in which the Development is proposed to be located has no greater than 10% poverty population according to the most recent census data. (§42(m)(1)(C)(vii)) These Census Tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.

(D) Evidence that the proposed Development has documented and committed Third-Party funding sources and the Development is located outside of a Qualified Census Tract serving 10% of households at 30% AMGI or less. (§2306.6710(e)(1)) The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the

Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The commitment of funds (an application alone will not suffice) must already have been received from the Third-Party funding source and must be equal to or greater than 2% (do not round) of the Total Development Costs reflected in the Application. Funds from the Department's HOME and Housing Trust Fund sources will not qualify under this category. Funding sources and amounts used for points under paragraph (5) of this subsection may not be used for this point item.

(E) The proposed Development is located in an urban core, on a site where the proposed use is not prohibited by the Unit of General Local Government via ordinance or regulation. For purposes of this item, an urban core is defined as a compact and contiguous geographical area that is located in a Metropolitan Statistical Area within the city limits with a population of no less than 150,000 composed of adjacent block groups of which is zoned to accommodate a mix of medium or high density residential and commercial uses and at least 50% of such land is actually being used for such purposes based on high density residential structures and/or commercial structures already constructed. Evidence must be submitted in the form of zoning maps and a certification provided in the Application.

(F) The proposed Development is located in a high opportunity area as identified in §49.5(d)(2)(D)(i) - (iii) of this chapter (relating to Site and Development Restrictions).

(17) Economic Development Initiatives. An Application may qualify to receive 4 points under subparagraphs (A) - (D) of this paragraph. For the purpose of this paragraph, "area" shall mean the boundaries of any zone or community in subparagraph (A) of this paragraph or the area in which funds in subparagraph (B) of this paragraph must be used:

(A) A Designated State or Federal Empowerment/Enterprise Zone, Urban Enterprise Community, or Urban Enhanced Enterprise Community. To be eligible for these points, Applicants must submit a letter and a map of the zoned area from a city/county official stating that the proposed Development is located within such a designated zone or area. The letter should be no older than six (6) months from the first day of the Application Acceptance Period (§2306.127); or

(B) An area that has received an award within the three year period prior to the beginning of the Application Acceptance Period, from the Texas Capital Fund, Texas or Federal Enterprise Zone Fund, Texas Leverage Fund, Industrial Revenue Bond Program, Emerging Technologies, Skills Development, Rural Business Enterprise Grants, Certified Development Company Loans, or Micro Loan Program or other state or federally funded economic development initiatives approved by the Department (This excludes limited highway improvement and roadwork projects, but does include broader regional transportation initiatives targeted to expanding economic development); or

(C) A geographical area which is an Economically Distressed Area; a Colonia; or a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD at the time of Application submission (these census tracts are designated in the 2011 Housing Tax Credits Site Demographics Characteristics Report (§2306.127); or

(D) The Development is located in a county that has received an award within the three (3) years prior to the beginning of the Application Acceptance Period, from the Texas Department of Agriculture's Rural Municipal Finance Program or Real Estate Development and Infrastructure Program. Cities which have received one of these awards are categorized as awards to the county as a whole so Developments located in a different city than the city awarded, but in the same county, will still be eligible for these points.

(E) Points under subparagraphs (A), (B) and (C) of this paragraph will not be granted if more than 3 Developments received an award of Housing Tax Credits in the applicable area in the seven (7) years prior to the beginning of the Application Acceptance Period. The Applicant must provide receipt of funds to the area by evidence of a map of the designated area for such funding and documentation of the recipient of the award of funds or a letter from the entity granting such funds stating that funds were awarded in the designated area.

(18) Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits. (§2306.6725(b)(2)) Applications may receive 4 points if the proposed Development is located in a census tract in which there are no other existing Developments supported by Housing Tax Credits that serve the same type of household, regardless of whether the Development serves the general or elderly populations. Evidence of the census tract in which the Development is located must be submitted. These census tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.

(19) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) Applications may qualify to receive 4 points for this item. The Department will award these points to Applications in which at least 5% of the Units are set aside for Persons with Special Needs. For purposes of this section, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. The twelve-month period will begin on the date each building receives its Certificate of Occupancy. For buildings that do not receive a Certificate of Occupancy, the twelve-month period will begin on the placed in service date as provided in the Cost Certification manual. After the twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs.

(20) Length of Affordability Period. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) Applications may qualify to receive up to 4 points. In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that are willing to extend the affordability period for a Development beyond the thirty (30) years required in the Code may receive points as follows:

(A) Add five (5) years of affordability after the extended use period for a total affordability period of thirty-five (35) years (2 points); or

(B) Add ten (10) years of affordability after the extended use period for a total affordability period of forty (40) years (4 points).

(21) Site Characteristics. Development Sites, including scattered sites, may qualify to receive up to 4 points for this item. Developments Sites must be located within a one mile radius (two-mile radius for Developments competing for a Rural Regional Allocation) of at least three (3) services appropriate to the target population. A

site located within one-quarter mile of public transportation that is accessible to all residents including Persons With Disabilities and/or located within a community that has another form of transportation, including, but not limited to, special transit service or specialized elderly transportation for Qualified Elderly Developments, will receive full points regardless of the proximity to amenities, as long as the Applicant provides appropriate evidence of the transportation services used to satisfy this requirement. If a Development is providing its own specialized van or funding a comparable service, then this will be a requirement of the LURA. Only one service of each type listed in subparagraphs (A) - (L) of this paragraph will count towards the points. A map must be included identifying the Development Site and the location of the services by name. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction, must be under active construction, post pad by the date the Application is submitted.

(A) Full service grocery store or supermarket.

(B) Pharmacy.

(C) Convenience Store/Mini-market.

(D) Department or Retail Merchandise Store.

(E) Bank/Credit Union.

(F) Restaurant (including fast food).

(G) Indoor public recreation facilities, such as civic centers, community centers, and libraries.

(H) Outdoor public recreation facilities such as parks, golf courses, and swimming pools.

(I) Hospital/medical clinic.

(J) Medical offices (physician, dentistry, optometry).

(K) Public Schools (only eligible for Developments that are not Qualified Elderly Developments).

(L) Senior Center.

(22) Development Size. The Development consists of not more than 36 Units (3 points).

(23) Sponsor Characteristics. Applications may qualify to receive a maximum of 2 points for this item for qualifying under either subparagraph (A) or (B) of this paragraph. (§42(m)(1)(C)(iv))

(A) The Applicant has submitted a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Applicant will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609; or

(B) There is a HUB that does not meet the experience requirements under §49.8(4) of this chapter, as certified by the Texas Comptroller of Public Accounts, has at least 51% ownership interest in the General Partner and materially participates in the Development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Comptroller of Public Accounts that the Person is a HUB at the close of the Application Acceptance Period. The HUB will be disqualified from receiving these points if any Principal of the HUB has developed, and received 8609's for, more than two Developments involving tax credits.

(24) Qualified Census Tracts with Revitalization. (§42(m)(1)(B)(ii)(III)) Applications may qualify to receive 1 point for this item if the Development is located within a Qualified Census Tract and contributes to a concerted Community Revitalization Plan. Evidence of the Community Revitalization Plan must be in the form of a letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan or only if the Community Revitalization Plan has specific boundaries, a copy of the plan, adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.

(25) Developments Intended for Eventual Tenant Ownership--Right of First Refusal. Applications may qualify to receive 1 point for this item. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Development Owner may qualify for these points by providing the right of first refusal in the following terms.

(A) Upon the earlier to occur of:

(i) The Development Owner's determination to sell the Development; or

(ii) The Development Owner's request to the Department, pursuant to §42(h)(6)(E)(II) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the Development Owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Development Owner determines that it will sell the Development at the end of the Compliance Period, the Notice of Intent shall be given no later than two (2) years prior to expiration of the Compliance Period. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two (2) years prior to date upon which the Development Owner intends to sell the Development.

(B) During the two (2) years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(i) During the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 CFR §92.1 (a "CHDO") and is approved by the Department;

(ii) During the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(iii) During the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department;

(iv) If, during such two-year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in

clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organizations), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After whichever occurs the later of:

(i) The end of the Compliance Period; or

(ii) Two (2) years from delivery of a Notice of Intent, the Development Owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of one hundred twenty (120) days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

(D) At any time prior to the giving of the Notice of Intent, the Development Owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(E) The Department shall, at the request of the Development Owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(26) Leveraging of Private, State, and Federal Resources. Applications may qualify to receive 1 point for this item. (§2306.6725(a)(3)) Funding sources used for points under paragraph (5) of this subsection may be used for this point item; however, funding amounts may not be duplicative.

(A) Evidence must be submitted in the Application that the proposed Development has received or will receive loan(s), grant(s) or in-kind contributions from a private, state or federal resource, which include Capital Grant Funds and HOPE VI funds, that is equal to or greater than 2% (do not round) of the Total Housing Development Costs reflected in the Application.

(B) For in-kind contributions, evidence must be submitted in the Application from a private, state or federal resource which substantiates the value of the in-kind contributions. Development based rental subsidies from private, state or federal resource may qualify under this section if evidence of the remaining value of the contract is submitted from the source. The value of the contract does not include past subsidies.

(C) Qualifying funds awarded through local entities may qualify for points if the original source of the funds is from a private, state or federal source. If qualifying funds awarded through local entities are used for this item, a statement from the local entity must be provided that identifies the original source of funds.

(D) Applicants may only submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, two sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost. However, two sources may not be submitted if each source is for an amount equal to 2% of the Total Housing Development Cost.

(E) The funding must be in addition to the primary funding (construction and permanent loans) that is proposed to be utilized and cannot be issued from the same primary funding source or an affiliated source. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Unit of General Local Government.

(F) The Development must have already applied for funding from the funding entity. Evidence to be submitted with the Application must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. At the time the executed Commitment is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the governing body of the entity for the sufficient financing to the Department. If the funding commitment from the private, state or federal source, identified in the Application, or qualifying substitute source, has not been received by the date the Department's Commitment is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the commitment from the private, state or federal source, the Commitment will be rescinded and the credits reallocated. Funds from the Department's HOME and Housing Trust Fund sources will only qualify under this category if there is a Notice of Funding Availability (NOFA) out for available funds and the Applicant is eligible under that NOFA.

(G) To qualify for this point, the Rent Schedule must show that at least 3% (not using normal rounding) of all Low-Income Units are designated to serve individuals or families with incomes at or below 30% of AMGI.

(27) Scoring Criteria Imposing Penalties. (§2306.6710(b)(2))

(A) Penalties will be imposed on an Application if the Applicant has requested an extension of the Carryover or 10% Test deadline, and did not meet the original submission deadline, relating to Developments receiving a Housing Tax Credit Commitment made in the Application Round preceding the current round. For each extension request made, unless the person approving the extension (the Board or the Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could

not have been reasonably anticipated, the Applicant will receive a 5 point deduction. No penalty points or fees will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve TRDO-USDA as a lender if TRDO-USDA or the Department is the cause for the Applicant not meeting the deadline.

(B) Penalties will be imposed on an Application if Developer or Principal of the Applicant violates the Adherence to Obligations pursuant to §49.12(a) of this chapter (relating to Post Award Activities).

(b) Tie Breaker Factors.

(1) In the event that two or more Applications receive the same number of points in any given Set-Aside category, Rural Regional Allocation or Urban Regional Allocation, or Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment.

(A) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction or Adaptive Reuse.

(B) The Application located in the municipality or, if located outside a municipality, the county that has the lowest state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins as reflected in the Reference Manual will win this second tier tie breaker.

(C) The amount of requested tax credits per square foot of Net Rentable Area (the lower credits per square foot has preference).

(D) Developments that are intended for eventual tenant ownership. Such Developments must utilize a detached single family site plan and building design and have a business plan describing how the Development is intended to convert to tenant ownership at the end of the 15-year compliance period.

(2) This paragraph identifies how ties will be handled when dealing with the restrictions on location identified in §49.8(2)(B) of this chapter (relating to One Mile Three Year Rule), and in dealing with any issues relating to capture rate calculation. When two Tax-Exempt Bond Developments would violate one of these restrictions, and only one Development can be selected, the Department will utilize the Certificate of Reservation docket number issued by the Texas Bond Review Board (TBRB) in making its determination. When two Competitive Housing Tax Credits Applications in the Application Round would violate one of these restrictions, and only one Development can be selected, the Department will utilize the tie breakers identified in paragraph (1) of this subsection. When a Tax-Exempt Bond Development and a Competitive Housing Tax Credit Application in the Application Round would both violate a restriction, the following determination will be used:

(A) Tax-Exempt Bond Developments that receive their Certificate of Reservation from the TBRB on or before April 29, 2011 will take precedence over the Housing Tax Credit Applications in the 2011 Application Round;

(B) Housing Tax Credit Applications approved by the Board for tax credits in July 2011 will take precedence over the Tax-Exempt Bond Developments that received their Certificate of Reservation from the TBRB on or between May 2, 2011 and July 29, 2011; and

(C) After July 29, 2011, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the 2011 Application Round on the waiting list. However, if no Certificate of Reservation has been issued by the date the Board approves an allocation to a Development from the waiting list of Applications in the 2011 Application Round or a forward commitment, then the waiting list Application or forward commitment will be eligible for its allocation.

(c) Staff Recommendations. (§2306.1112 and §2306.6731) In accordance with the QAP and other applicable Department rules, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. Recommendations of staff to the Board will be the recommendations of that Committee except as otherwise disclosed.

(d) Tax Credits Financed Under American Recovery and Reinvestment Act of 2009. (§2306.6736)

(1) To the extent the Department receives federal funds under the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) or any subsequent law (including any extension or renewal thereof) that requires the Department to award the federal funds in the same manner and subject to the same limitation as the awards of the housing tax credits, the following provisions apply.

(2) Any reference in this chapter to the administration of the housing tax credit program shall apply equally to the administration of such federal funds except:

(A) the Department may, as approved by the Board, establish a separate application procedure for such funds, outside of the uniform application cycle referred to in §2306.111, Texas Government Code, and the deadlines established in §2306.6724, Texas Government Code, and any reference herein to the application period shall refer to the period beginning on the date the Department begins accepting applications for such funds and continuing until all such available funds are awarded;

(B) unless reauthorized, this section is repealed on August 31, 2011.

§49.10. Board Decisions.

(a) The Board's decisions shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with the criteria and requirements set forth in this QAP and other applicable Department rules.

(1) On awarding tax credits, the Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, and the reasons for any decision that conflicts with the recommendations made by Department staff. The Board may not make, without good cause, a commitment decision that conflicts with the recommendations of Department staff. Good cause includes the Board's decision to apply discretionary factors. (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv))

(2) In making a determination to allocate tax credits, the Board shall be authorized to not rely solely on the number of points scored by an Application. It shall in addition, be entitled to take into account, as it deems appropriate, the discretionary factors listed in this paragraph. The Board may also apply these discretionary factors to its consideration of Tax-Exempt Bond Developments. If the Board disapproves or fails to act upon an Application, the Department shall issue to the Applicant a written notice stating the reason(s) for the Board's disapproval or failure to act. The discretionary factors include: (§2306.111(g)(3))

(A) The Developer market study;

(B) The location;

(C) The compliance history of the Developer;

(D) The financial feasibility;

(E) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;

(F) The Development's proximity to other low-income housing Developments;

(G) The availability of adequate public facilities and services;

(H) The anticipated impact on local school districts;

(I) Zoning and other land use considerations;

(J) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and

(K) Other good cause as found by the Board.

(3) Before the Board approves any Application, the Department shall assess the compliance history of the Applicant with respect to all applicable requirements; and the compliance issues associated with the proposed Development, including compliance information provided by the Texas State Affordable Housing Corporation. Department staff shall provide to the Board a written report regarding the results of the assessments. The Board has established a rule for the materiality of noncompliance in Chapter 60 of this title to address noncompliance associated with the Development, Applicant or Affiliate.

(b) Waiting List. (§2306.6711(c) and (d)) If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Board shall generate, concurrently with the issuance of the Commitment, a waiting list of additional Applications ranked by score in descending order of priority based on Set-Aside categories and regional allocation goals. The Board may also apply discretionary factors in determining the waiting list provided that it takes into account the need to assure adherence to regional allocation requirements. If at any time prior to the end of the Application Round, one or more Commitments expire or a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment to Applications on the waiting list subject to the amount of returned credits, the regional allocation goals and the Set-Aside categories, including the 10% Nonprofit Set-Aside allocation, 15% At-Risk Set-Aside allocation and 5% TRDO-USDA Set-Aside required under §42(h)(5) of the Code. At the end of each calendar year, all Applications which have not received a Commitment shall be deemed terminated. The Applicant may re-apply to the Department during the next Application Acceptance Period.

(c) Forward Commitments. The Board may determine to issue Commitments of tax credit authority with respect to Applications from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment") to Applications submitted in accordance with the rules and timelines required under this chapter and the application checklist provided in the Tax Credit (Procedures) Manual. The Board will utilize its discretion in determining the amount of credits to be allocated as forward commitments and the reasons for those commitments considering score and discretionary factors.

(1) Unless otherwise provided in the Commitment with respect to a Development selected to receive a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the State Housing Credit Ceiling from which the credits are allocated.

(2) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. If a forward commitment shall be made with respect to a Development placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of §42(h)(1)(C) of the Code.

(3) If tax credit authority shall become available to the Department in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible Development which received a forward commitment, in which event the forward commitment shall be canceled with respect to such Development.

(d) Appeals Process. (§2306.6715) An Applicant may appeal decisions made by the Department as follows:

(1) The decisions that may be appealed are identified in subparagraphs (A) - (D) of this paragraph.

(A) A determination regarding the Application's satisfaction of:

(i) Eligibility Requirements;

(ii) Disqualification or debarment criteria;

(iii) Pre-application or Application Threshold Criteria;

(iv) Underwriting Criteria;

(B) The scoring of the Application under the Application Selection Criteria;

(C) A recommendation as to the amount of Housing Tax Credits to be allocated to the Application; and

(D) Any Department decision that results in termination of an Application.

(2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant;

(3) An Applicant must file its appeal in writing with the Department not later than the seventh calendar day after the date the Department publishes the results of any stage of the Application evaluation process identified in §49.7 of this chapter (relating to Application Process). The appeal must be in writing, signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. The Appeal must be addressed to the Department to the attention of the Director of Multifamily Finance. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter (the QAP). If the appeal relates to the amount of Housing Tax Credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request;

(4) The Executive Director of the Department shall respond in writing to the appeal not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department in its offices. If the Applicant is not satisfied with the Executive Director's response to the appeal, the Applicant may appeal directly in writing to the Board, provided that an appeal filed with the Board under this subsection must be received by the Board before:

(A) The seventh calendar day preceding the date of the Board meeting at which the relevant commitment decision is expected to be made; or

(B) The third calendar day preceding the date of the Board meeting described by subparagraph (A) of this paragraph, if the Executive Director does not respond to the appeal before the date described by subparagraph (A) of this paragraph;

(5) Board review of an appeal under paragraph (4) of this subsection is based on the original Application. The Board may not review any information not contained in or filed with the original Application. The decision of the Board regarding the appeal is the final decision of the Department;

(6) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of the appeal. (§2306.6717(a)(5))

(e) Provision of Information or Challenges Regarding Applications from Unrelated Entities to the Application. The Department will address information or challenges received from unrelated entities to a specific 2011 active Application, utilizing a preponderance of the evidence standard, as stated in paragraphs (1) - (4) of this subsection, provided the information or challenge includes a contact name, telephone number, fax number and e-mail address of the person providing the information or challenge and must be received by the Department no later than the Application Challenges Deadline as identified in §49.3 of this chapter (relating to Program Calendar):

(1) Within fourteen (14) business days of the receipt of the information or challenge, the Department will post all information and challenges received (including any identifying information) to the Department's website;

(2) Within seven (7) business days of the receipt of the information or challenge, the Department will notify the Applicant related to the information or challenge. The Applicant will then have seven (7) business days to respond to all information and challenges provided to the Department; and

(3) Within fourteen (14) business days of the receipt of the response from the Applicant, the Department will evaluate all information submitted and other relevant documentation related to the investigation. This information may include information requested by the Department relating to this evaluation. The Department will post its determination summary to its website. Any determinations made by the Department cannot be appealed by any party unrelated to the Applicant.

(4) Nothing herein shall serve to limit the authority of the Board to apply discretion for good cause to the fullest extent lawfully permitted.

§49.11. Tax-Exempt Bond Developments.

(a) Filing of Applications. Applications for a Tax-Exempt Bond Development may be submitted to the Department as described in paragraphs (1) and (2) of this subsection:

(1) Applicants which receive advance notice of a Program Year 2011 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application not later than 12:00 p.m. on December 30, 2010. Such filing must be accompanied by the Application fee described in §49.14 of this chapter (relating to Program Related Fees);

(2) Applicants which receive advance notice of a Program Year 2011 Certificate of Reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 and Volume 2 of the Application and the Application fee described in §49.14 of this chapter prior to the Applicant's Certificate of Reservation date as assigned by the TBRB. Those Applications designated as Priority 3 by the TBRB must submit Volumes I and II within fourteen (14) days of the Certificate of Reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. Any outstanding documentation required under this section regardless of Priority must be submitted to the Department at least sixty (60) days prior to the Board meeting at which the decision to issue a Determination Notice would be made unless a waiver is requested by the Applicant. The Department staff will have limited discretion to recommend an Application with appropriate justification of the late submission;

(3) Multiple site applications will be considered to be one Application as identified in Chapter 1372, Texas Government Code.

(b) Applicability of Rules. Tax-Exempt Bond Development Applications are subject to all rules in this chapter, with the only exceptions being the following sections: §49.4(c)(12) of this chapter (relating to One Mile Same Year Rule); §49.5(b) of this chapter (relating to Credit Amount); §49.6 of this chapter (relating to Allocation Process); §49.7(b), (c) and (d) of this chapter (relating to Pre-application); §49.7(g) of this chapter (relating to Methodology for Awards); §49.7(k) of this chapter (relating to Rural Rescue Applications); §49.9 of this chapter (relating to Selection Criteria); §49.10(b) and (c) of this chapter (relating to Waiting List and Forward Commitments); and §49.12(e) - (g) of this chapter (relating to Carryover, 10% Test and Substantial Construction).

(c) Tenant Services. Tax-Exempt Bond Development Applications must provide an executed agreement with a qualified service provider for the provision of supportive services that would otherwise not be available for the tenants. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided. The provision of these services will be included in the LURA. Acceptable services include those described in §49.9(a)(9) of this chapter.

(d) Financial Feasibility Evaluation for Tax-Exempt Bond Developments. Section 42(m)(2)(D), Internal Revenue Code, requires the bond issuer (if other than the Department) to ensure that a Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Treasury Regulations prescribe the occasions upon which this determination must be made. In light of the requirement, issuers may either elect to underwrite the Development for this purpose in accordance with the QAP and the §1.32 of this title (relating to Underwriting Rules and Guidelines), or request that the Department perform the function. If the issuer underwrites the Development, the Department may request such underwriting report and may upon review make such changes in the amount of credits which the Development may be allowed as are appropriate under the Department's guidelines. The Determination Notice issued by the Department and any subsequent IRS Form(s) 8609 will reflect the amount of tax credits for which the Development is determined to be eligible in accordance with this subsection, and the amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice, based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined by the Department, as required by §42(m)(2)(D) of the Code. Increases to the amount of tax credits that exceed 110% of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director and are subject to the Credit Increase Fee as described in §49.14 of this chapter.

(e) Certification of Tax Exempt Applications with New Docket Numbers. Applications that are processed through the Department review and evaluation process and receive an affirmative Board Determination, but do not close the bonds prior to the Certificate of Reservation expiration date, and subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. The Applicant would need to receive a new docket number from the TBRB and one of the following must apply:

(1) The new docket number must be issued in the same program year as the original docket number and must not be more than four (4) months from the date the original application was withdrawn from the TBRB. The application must remain unchanged. This means that at a minimum, the following cannot have changed: site control, total number of units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, target population, scoring criteria (TDHCA issues) or TBRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §49.8(9) of this chapter (relating to Threshold Criteria) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) days after the date the TBRB issues the new docket number. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. This certification must be submitted no later than thirty (30) days after the date the TBRB issues the new docket number; or

(2) If there are changes to the Application as referenced in paragraph (1) of this subsection or if there is public opposition, the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new determination notice to be issued.

§49.12. Post Award Activities.

(a) Adherence to Obligations. (§2306.6720) Compliance with representations, undertakings and commitments made by an Applicant in the Application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, as stated in the representations and in accordance with the LURA. If a Development Owner does not produce the Development as represented in the Application; does not receive approval for an amendment to the Application by the Department prior to implementation of such amendment; or does not provide the necessary evidence for any points received by the required deadline:

(1) The Development Owner must provide a plan to the Department, for approval and subsequent implementation, that incorporates additional amenities to compensate for the non-conforming components; and

(2) The Board will opt either to terminate the Application and rescind the Commitment, Determination Notice or Carryover Allocation Agreement as applicable or the Department must:

(A) Reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to ten points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board;

(B) Prohibit eligibility to apply for Housing Tax Credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to twenty-four (24) months from the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department;

(C) In addition to, or in lieu of, the penalty in subparagraph (A) or (B) of this paragraph, the Board may assess a penalty fee of up to $1,000 per day for each violation.

(3) For amendments approved administratively by the Executive Director, the penalties in paragraph (2) of this subsection will not be imposed.

(b) Commitments and Determination Notices.

(1) Commitments. If the Application is for a commitment from the State Housing Credit Ceiling, the Department shall issue a Commitment to the Development Owner which shall:

(A) Confirm that the Board has approved the Application; and

(B) State the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in this chapter, and compliance by the Development Owner with the remaining requirements of this chapter and any other terms and conditions set forth therein by the Department. This Commitment shall expire on the date specified therein unless the Development Owner indicates acceptance of the Commitment by executing the Commitment, pays the required fee specified in §49.14(f) of this chapter (relating to Program Related Fees), and satisfies any other conditions set forth therein by the Department. The Commitment expiration date may not be extended;

(2) Determination Notices. If the Application regards a Tax-Exempt Bond Development, issue a Determination Notice to the Development Owner which shall:

(A) Confirm the Board's determination that the Development satisfies the requirements of this chapter (the QAP) and other applicable Department rules in accordance with the §42(m)(1)(D) of the Code. Applications that receive a Certificate of Reservation from the TBRB on or before November 15, 2010 will be required to satisfy the requirements of the 2010 QAP; Applications that receive a Certificate a Reservation from the TBRB on or after January 1, 2011 will be required to satisfy the requirements of the 2011 QAP; and

(B) State the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in §49.11 of this chapter (relating to Tax-Exempt Bond Developments) and compliance by the Development Owner with all applicable requirements of this chapter and any

other terms and conditions set forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §49.14(f) of this chapter and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended. Furthermore, no later than sixty (60) days following closing on the bonds, the Development Owner must submit a Management Plan and an Affirmative Marketing Plan (as further described in the carryover procedures as identified in the Tax Credit (Procedures) Manual and evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five (5) hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five (5) hours. Certifications must not be older than two (2) years;

(3) The Department shall notify, in writing, the mayor or other equivalent chief executive officer of the municipality in which the Property is located informing him/her of the Board's issuance of a Commitment or Determination Notice, as applicable;

(4) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or Rehabilitation exceeds the limitations established from time to time by the Department and the Board, unless the Department staff make a recommendation to the Board based on the need to fulfill the goals of the Housing Tax Credit Program as expressed in this QAP and other applicable Department rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented;

(5) The executed Commitment or Determination Notice must be returned to the Department no later than thirty (30) days after the effective date of the Notice provided that for Commitments under the State Housing Credit Ceiling that date is not later than December 31.

(6) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Development if:

(A) The Applicant or the Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Applications process for the Development;

(B) Any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(C) An event occurs with respect to the Applicant or the Development Owner which would have made the Development's Application ineligible for funding pursuant to §49.4 of this chapter (relating to Ineligibility) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(D) The Applicant or the Development Owner or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to comply with this chapter or other applicable Department rules or the procedures or requirements of the Department.

(c) Agreement and Election Statement. The Development Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the Applicable Percentage with respect to a building or buildings for the month in which the Carryover Allocation was accepted (or the month the bonds were closed for Tax-Exempt Bond Developments), as provided in the §42(b)(2) of the Code. Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Development Owner to make an effective election to fix the Applicable Percentage for a Development (receiving credits from the State Housing Credit Ceiling), the Carryover Allocation Document must be executed by the Department and the Development Owner within the same month. The Department staff will cooperate with a Development Owner, as possible or reasonable; to assure that the Carryover Allocation Document can be so executed.

(d) Documentation Submission Requirements at Commitment of Funds. No later than the date the Commitment or Determination Notice is executed by the Applicant and returned to the Department with the appropriate Commitment or Determination Fee as further described in §49.14(f) of this chapter, the following documents must also be provided to the Department. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded. For each Applicant all of the following must be provided:

(1) For entities formed outside the state of Texas, evidence that the entity has the authority to do business in Texas in the form of a Certificate of Filing from the Texas Office of the Secretary of State;

(2) A Certificate of Account Status from the Texas Comptroller of Public Accounts or, if such a Certificate is not available because the entity is newly formed, a statement to such effect; and a Certificate of Amendment from the Texas Office of the Secretary of State if the name reserved at Application has changed;

(3) Evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control and that those Persons signing the Application constitute all Persons required to sign or submit such documents;

(4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) Evidence that the Applicant has and will maintain Site Control through 10% Test; and

(6) Any conditions identified in the Real Estate Analysis report or any other conditions of the award required to be met at Commitment or Determination Notice.

(e) Carryover. All Developments which received a Commitment, and will not be placed in service and receive IRS Form 8609 in the year the Commitment was issued, must submit the Carryover documentation to the Department no later than the Carryover Documentation Delivery Date as identified in §49.3 of this chapter (relating to Program Calendar) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation, or an approved extension, has not been received by this deadline. In the event that a Development Owner intends to submit the Carryover documentation in any month preceding November of the year in which the Commitment is issued, in order to fix the Applicable Percentage for the Development in that month, it must be submitted no later than the first Friday in the preceding month.

(2) If the financing structure, syndication rate, amount of debt or syndication proceeds are revised at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department.

(3) The Carryover Allocation must be properly completed and delivered to the Department as prescribed by the carryover procedures identified in the Tax Credit (Procedures) Manual.

(4) All Carryover Allocations will be contingent upon the Development Owner providing evidence that the Development Site is still under control of the Development Owner. For purposes of this paragraph, site control must be identical to the same Development Site that was submitted at the time of Application submission.

(5) The Department will not execute a Carryover Allocation Agreement with any Development Owner having any member in Material Noncompliance on October 3, 2011.

(f) 10% Test. No later than six (6) months from the date the Carryover Allocation Document is executed by the Department and the Development Owner, more than 10% of the Development Owner's reasonably expected basis must have been incurred pursuant to §42(h)(1)(E)(i) and (ii) of the Internal Revenue Code (as amended by The Housing and Economic Recovery Act of 2008) and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than the 10% Test Documentation Delivery Date as identified in §49.3 of this chapter. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (6) of this subsection. The 10% Test Documentation will be contingent upon the following, in addition to all other conditions placed upon the Application in the Commitment:

(1) Evidence that the Development Owner has purchased, transferred, leased or otherwise has ownership of, the Development Site;

(2) A current original plat or survey of the land, prepared by a duly licensed Texas Registered Professional Land Surveyor. Such survey shall conform to standards prescribed in the carryover procedures of Practice for Land Surveying in Texas as promulgated and amended from time to time by the Texas Surveyors Association as more fully described in the Tax Credit (Procedures) Manual;

(3) For all Developments involving New Construction or Adaptive Reuse, evidence of the availability of all necessary utilities/services to the Development Site must be provided. Necessary utilities include natural gas (if applicable), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter should not be older than three (3) months from the first day of the Application Acceptance Period and must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost necessary to obtain service, and an estimate of any portion of that cost that will be borne by the Development Owner. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the Development Site;

(4) A Management Plan and an Affirmative Marketing Plan as further described in the carryover procedures identified in Tax Credit (Procedures) Manual;

(5) Evidence confirming attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five (5) hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five (5) hours on or before the time the 10% Test Documentation is submitted. Certifications must not be older than two (2) years from the date of submission of the 10% Test Documentation; and

(6) A Certification from the Architect that the Development will be equipped with Energy Saving Devices that meet the standard statewide energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation.

(g) Commencement of Substantial Construction. No later than July 1 of the year following the execution of the Carryover Allocation Document the Development Owner must submit evidence of having commenced and continued substantial construction activities as defined in Chapter 60 of this title (relating to Compliance Administration).

(h) Land Use Restriction Agreement (LURA). The Development Owner must request a LURA from the Department no later than the date specified in Chapter 60 of this title. The Development Owner must complete, date, sign and acknowledge before a notary public the LURA and send the original to the Department for execution. The initial compliance and monitoring fee must be included, accompanied by a statement, signed by the Owner, indicating the start of the Development's Credit Period and the earliest placed in service date for the Development buildings. After receipt of the signed LURA from the Department, the Development Owner shall then record the LURA, along with any and all exhibits attached thereto, in the real property records of the county where the Development is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department no later than the date that the Cost Certification Documentation is submitted to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Development and/or the Property prior to the recording of the LURA, the Development Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA, which are required by §42(h)(6)(E)(ii) of the Code to remain in effect following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department, or assigns, shall physically inspect the Development for compliance with the Application and the representations, warranties, covenants, agreements and undertakings contained therein. Such inspection will be conducted before the IRS Form 8609 is issued for a building, but it shall be conducted in no event later than the end of the second calendar year following the year the last building in the Development is placed in service. The Development Owner for Tax-Exempt Bond Developments shall obtain a subordination agreement wherein the lien of the mortgage is subordinated to the LURA. The LURA shall contain any provision which requires the Development Owner to restrict rents and incomes at any AMGI level, as approved by the Board. The restricted gross rents for any AMGI level outlined in the LURA will be calculated in accordance with §42(g)(2)(A), Internal Revenue Code.

(i) Cost Certification. The cost certification procedures as identified in the Tax Credit (Procedures) Manual sets forth the documentation required for the Department to perform a feasibility analysis in accordance with §42(m)(2)(C)(i)(II), Internal Revenue Code, and determine the final Credit to be allocated to the Development.

(1) Required cost certification documentation must be received by the Department no later than January 15 following the year the Credit Period begins. Any Developments issued a Commitment or Determination Notice that fails to submit its cost certification documentation by this deadline will be reported to the IRS and the Owner will be required to submit a request for extension consistent with §49.13(c) of this chapter (relating to Extension Requests);

(2) The Department will perform an initial evaluation of the cost certification documentation and notify the Development Owner in a deficiency letter of all additional required documentation.

Any communication issued to the Development Owner pertaining to the cost certification documentation may also be copied to the syndicator;

(3) For the Department to release IRS Forms 8609, Developments must have:

(A) Placed in Service by December 31 of the year the Commitment Notice was issued if a Carryover Allocation was not requested and received; December 31 of the second year following the year the Carryover Allocation Agreement was executed; or approved Placed in Service deadline;

(B) Submitted all Cost Certification documentation as more fully described in the cost certification procedures identified in the Tax Credit (Procedures) Manual, including:

(i) Carryover Allocation Agreement/Determination Notice and Election Statement;

(ii) Owner's Statement of Certification;

(iii) Owner Summary;

(iv) Evidence of Nonprofit and CHDO Participation;

(v) Evidence of Historically Underutilized Business (HUB) Participation;

(vi) Development Summary;

(vii) As-Built Survey;

(viii) Closing Statement;

(ix) Title Policy;

(x) Evidence of Placement in Service;

(xi) Independent Auditor's Reports;

(xii) Total Development Cost Schedule;

(xiii) AIA Form G702 and G703, Application and Certificate for Payment;

(xiv) Rent Schedule;

(xv) Utility Allowance;

(xvi) Annual Estimated Operating Expenses and 15-Year Proforma;

(xvii) Current Annual Operating Statement and Rent Roll;

(xviii) Final Sources of Funds;

(xix) Executed Limited Partnership Agreement;

(xx) Loan Agreement or Firm Commitment;

(xxi) Architect's Certification of Fair Housing Requirements; and

(xxii) TDHCA Compliance Workshop Certificate;

(C) Complied with the requirements set forth in the Cost Certification Procedures Manual;

(D) Received written notice from the Department that all deficiencies noted during the final inspection have been resolved in accordance with Chapter 60 of this title;

(E) Informed the Department of and received written approval for all Development amendments in accordance with §49.13(b) of this chapter (relating to Amendment of Application Subsequent to Allocation by Board);

(F) Informed the Department of and received written approval for all ownership transfers in accordance with §49.13(d) of this chapter (relating to Housing Tax Credit and Ownership Transfers);

(G) Submitted to the Department the LURA in accordance with subsection (h) of this section;

(H) Paid all applicable Department fees; and

(I) Corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject property, as described in Chapter 60 of this title.

§49.13. Board Reevaluation (§2306.6731(b)).

(a) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change between the time of initial Board approval of the Development and the time of issuance of a Commitment or Determination Notice for the Development. For the purposes of this subsection, substantial change shall be based on those items identified in subsection (b)(4) of this section. The Board may revoke any Commitment or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

(b) Amendment of Application Subsequent to Allocation by Board. (§2306.6712 and §2306.6717(a)(4))

(1) If a proposed modification would materially alter a Development approved for an allocation of a Housing Tax Credit, or if the Applicant has altered any Selection Criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application and such request shall include a proposed form of amendment prepared at the Applicant's sole expense by an attorney licensed to practice law in the State of Texas and the applicable fee as identified in §49.14(l) of this chapter (relating to Extension and Amendment Fees). The amendment request will not be considered received unless accompanied with the corresponding fee.

(2) The Executive Director of the Department shall require the appropriate Department staff to evaluate the amendment and provide an analysis and written recommendation to the Board. The appropriate party monitoring compliance during construction in accordance with subsection (h) of this section shall also provide to the Board an analysis and written recommendation regarding the amendment. For amendments not requiring Board approval, the amendment will be deemed approved if the Executive Director does not approve or deny within thirty (30) days from the date on which the Department has acknowledged it has received all additional information that it has, in writing, requested of the Applicant to enable the Department to evaluate the amendment request. For amendments which require Board approval, the amendment request must be received by the Department at least forty-five (45) days prior to the Board meeting where the amendment will be considered.

(3) The Board must vote on whether to approve an amendment that is material. The Executive Director may administratively approve an amendment that is not material. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment or terminate the allocation of Housing Tax Credits and reallocate the credits to other Applicants on the waiting list if the Board determines that the modification proposed in the amendment:

(A) Would materially alter the Development in a negative manner; or

(B) Would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

(A) A significant modification of the site plan;

(B) A modification of the number of units or bedroom mix of units;

(C) A substantive modification of the scope of tenant services;

(D) A reduction of 3% or more in the square footage of the units or common areas;

(E) A significant modification of the architectural design of the Development;

(F) A modification of the residential density of the Development of at least 5%;

(G) An increase or decrease in the site acreage of greater than 10% from the original site under control and proposed in the Application; and

(H) Any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, the Department staff shall consider whether the need for the modification proposed in the amendment was:

(A) Reasonably foreseeable by the Applicant at the time the Application was submitted; or

(B) Preventable by the Applicant. An amendment will be disapproved if the circumstances were reasonably foreseeable and preventable unless there is a finding of good cause for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code.

(7) Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and monitor regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting.

(8) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants targeted in the Real Estate Analysis Report at the time of the Commitment Notice issuance, as approved by the Board, the following procedure will apply:

(A) For amendments that involve a reduction in the total number of Low-Income Units being served, or a reduction in the number of Low-Income Units at any level of AMGI, as approved by the Board, evidence must be presented to the Department that includes written confirmation from the lender and syndicator that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from the Real Estate Analysis Division that the Unit adjustment (or an alternative Unit adjustment) is necessary for the continued feasibility of the Development; and

(B) If it is determined by the Department that the allocation of credits would not have been made in the year of allocation because the loss of low-income targeting points would have resulted in the Application not receiving an allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(c) Extension Requests. All extension requests relating to the Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable extension fee as identified in §49.14(l) of this chapter. Such requests must be submitted to the Department no later than the date for which an extension is being requested. All requests for extensions totaling less than six (6) months may be approved by the Executive Director and are not required to have Board approval. For extensions that require Board approval, the extension request must be received by the Department at least fifteen (15) business days prior to the Board meeting where the extension will be considered. The extension request shall specify a requested extension date and the reason why such an extension is required. Carryover extension requests shall not request an extended deadline later than December 1st of the year the Commitment was issued. The Department, in its sole discretion, may consider and grant such extension requests for all items. If an extension is required at Cost Certification, the fee as identified in §49.14 of this chapter (relating to Program Related Fees) must be received by the Department to qualify for issuance of Forms 8609.

(d) Housing Tax Credit and Ownership Transfers. (§2306.6713) A Development Owner may not transfer an allocation of Housing Tax Credits or ownership of a Development supported with an allocation of Housing Tax Credits to any Person including an Affiliate of the Development Owner unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer.

(1) Transfers (other than an Affiliate included in the ownership structure) will not be approved prior to the issuance of IRS Forms 8609 unless the Development Owner can provide evidence that a hardship is creating the need for the transfer (potential bankruptcy, removal by a partner, etc.). A Development Owner seeking Executive Director approval of a transfer and the proposed transferee must provide to the Department a copy of any applicable agreement between the parties to the transfer, including any third-party agreement with the Department.

(2) A Development Owner seeking Executive Director approval of a transfer must provide the Department with documentation requested by the Department, including but not limited to, a list of the names of transferees and Related Parties; and detailed information describing the experience and financial capacity of transferees and related parties. All transfer requests must disclose the reason for the request. The Development Owner shall certify to the Executive Director that the tenants in the Development have been notified in writing of the transfer before the 30th day preceding the date of submission of the transfer request to the Department. Not later than the fifth working day after the date the Department receives all necessary information under this section, the Department shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the Housing Tax Credit Program, LURAs; and the sufficiency of the transferee's experience with Developments supported with Housing Credit Allocations. If the viable operation of the Development is deemed to be in jeopardy by the Department, the Department may authorize changes that were not contemplated in the Application.

(3) As it relates to the credit amount further described in §49.5(b) of this chapter (relating to Site and Development Restric-

tions), the credit amount will not be applied in the following circumstances:

(A) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(B) In cases where the General Partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(e) Sale of Certain Tax Credit Properties. Consistent with §2306.6726, Texas Government Code, not later than two (2) years before the expiration of the Compliance Period, a Development Owner who agreed to provide a right of first refusal under §2306.6725(b)(1), Texas Government Code, and who intends to sell the property shall notify the Department of its intent to sell.

(1) The Development Owner shall notify Qualified Nonprofit Organizations and tenant organizations of the opportunity to purchase the Development. The Development Owner may:

(A) During the first six-month period after notifying the Department, negotiate or enter into a purchase agreement only with a Qualified Nonprofit Organization that is also a community housing development organization as defined by the Federal Home Investment Partnership Program (HOME);

(B) During the second six-month period after notifying the Department, negotiate or enter into a purchase agreement with any Qualified Nonprofit Organization or tenant organization; and

(C) During the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with the Department or any Qualified Nonprofit Organization or tenant organization approved by the Department.

(2) Notwithstanding items for which points were received consistent with §49.9(a) of this chapter (relating to Selection Criteria), a Development Owner may sell the Development to any purchaser after the expiration of the compliance period if a Qualified Nonprofit Organization or tenant organization does not offer to purchase the Development at the minimum price provided by §42(i)(7) of the Code, and the Department declines to purchase the Development.

(f) Withdrawals. An Applicant may withdraw an Application prior to receiving a Commitment, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation, and making any required statements as to the return of any tax credits allocated to the Development at issue.

(g) Alternative Dispute Resolution (ADR) Policy. In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2010, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title (relating to Alternative Dispute Resolution and Negotiated Rulemaking).

(h) Compliance Monitoring and Material Noncompliance. Section 42(m)(1)(B)(iii) of the Code, requires the Department as the housing credit agency to include in its QAP a procedure that the Department will follow in monitoring Developments for compliance with the provisions of §42 of the Code and in notifying the IRS of any noncompliance of which the Department becomes aware. Detailed compliance rules and procedures for monitoring are set forth in Chapter 60 of this title (relating to Compliance Administration).

§49.14. Program Related Fees.

(a) Timely Payment of Fees. All fees must be paid as stated in this section, unless the Executive Director has granted a waiver for specific extenuating and extraordinary circumstances. To be eligible for a waiver, the Applicant must submit a request for a waiver no later than ten (10) business days prior to the deadlines as stated in this section. Any fees, as further described in this section, that are not timely paid will cause an Applicant to be ineligible to apply for tax credits and additional tax credits and ineligible to submit extension requests, ownership changes and Application amendments. Payments made by check, for which insufficient funds are available, may cause the Application, Commitment or Allocation to be terminated.

(b) Pre-application Fee. Each Applicant that submits a Pre-application shall submit to the Department, along with such Pre-application, a non refundable Pre-application fee, in the amount of $10 per Unit. Units for the calculation of the Pre-application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Pre-applications without the specified Pre-application Fee in the form of a check will not be accepted. Pre-applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Pre-application fee. (§2306.6716(d)) For Tax Exempt Bond Developments with the Department as the issuer, the Applicant shall submit the following fees: $1,000 (payable to TDHCA), $2,000 (payable to Vinson & Elkins, Bond Counsel), and $5,000 (payable to the Texas Bond Review Board).

(c) Application Fee. Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a pre-application which met Pre-application Threshold and for which a pre-application fee was paid, the Application fee will be $20 per Unit. For Applicants not having submitted a pre-application, the Application fee will be $30 per Unit. Units for the calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a check will not be accepted. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Application fee. (§2306.6716(d)) For Tax Exempt Bond Developments with the Department as the Issuer the Applicant shall submit a tax credit application fee of $30 per unit and bond application fee of $10,000. Those Applications utilizing a local issuer only need to submit the tax credit application fee. For Tax-Exempt Bond Development refunding Applications, with the Department as the issuer, the Application Fee will be $10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be $5,000.

(d) Refunds of Pre-application or Application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of any fees collected for a pre-application or Application that is withdrawn by the Applicant or that is not fully processed by the Department. The amount of refund on pre-applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 50% of the review, and Threshold review prior to a deficiency issued will constitute 30% of the review. Deficiencies submitted and reviewed constitute 20% of the review. The amount of refund on Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 20% of the review, the site visit will constitute 20% of the review, Eligibility and Selection review will constitute 20%, and Threshold review will constitute 20% of the review, and underwriting review will constitute 20%. The Department must provide the refund to the Applicant not later than the 30th day after the date of request.

(e) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation of a Development by an independent external underwriter in accordance with §49.7(h) of this chapter (relating to Application Process) if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment Fee established in subsection (f) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(f) Commitment or Determination Notice Fee. Each Development Owner that receives a Commitment or Determination Notice shall submit to the Department, not later than the expiration date on the Commitment or Determination Notice, a Commitment or Determination Fee equal to 5% of the annual Housing Credit Allocation amount. The Commitment or Determination Fee shall be paid by check. If a Development Owner of an Application awarded Competitive Housing Tax Credits has paid a Commitment Fee and returns the credits by November 1, 2011, the Development Owner may receive a refund of 50% of the Commitment Fee. If a Development Owner of an Application awarded Housing Tax Credits associated with Tax-Exempt Bonds has paid a Determination Fee and is not able close on the bond transaction within ninety (90) days of the issuance date of the Determination Notice, the Development Owner may receive a refund of 50% of the Determination Fee. The Determination Fee will not be refundable after ninety (90) days of the issuance date of the Determination Notice.

(g) Compliance Monitoring Fee. Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per tax credit Unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. For Tax-Exempt Bond Developments with the Department as the issuer, the annual tax credit compliance fee will be paid annually in advance (for the duration of the compliance or affordability period) and is equal to $40/Unit beginning two (2) years from the first payment date of the bonds; the asset management fee, if applicable is paid in advance and is equal to $25/Unit beginning two (2) years from the first payment date. Compliance fees may be adjusted from time to time by the Department.

(h) Building Inspection Fee. The Building Inspection Fee must be paid at the time the Commitment Fee is paid. The Building Inspection Fee for all Developments is $750. Inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development.

(i) Tax-Exempt Bond Credit Increase Request Fee. As further described in §49.11 of this chapter (relating to Tax-Exempt Bond Developments), requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 5% of the amount of the credit increase for one (1) year.

(j) Public Information Requests. Public information requests are processed by the Department in accordance with the provisions of the Texas Government Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(k) Periodic Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. The Department shall publish each year an updated schedule of Application fees that specifies the amount to be charged at each stage of the Application process. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

(l) Extension and Amendment Fees.

(1) All extension requests relating to the Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable extension fee in the form of a check in the amount of $2,500. Such extension requests must be submitted to the Department in accordance with §49.13(c) of this chapter (relating to Board Reevaluation).

(2) Amendment requests must be submitted in accordance with §49.13(b) of this chapter and be accompanied by a mandatory non-refundable amendment fee in the form of a check in the amount of $2,500.

(3) The Board may waive extension or amendment fees for good cause.

(m) Penalties. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of 8609's. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of form 8609's if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with §42, Internal Revenue Code. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Department will impose a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate of that Applicant for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending the Round immediately following the return of credits unless otherwise exempted in accordance with the Board's policy pursuant to the implementation of The Housing and Economic Recovery Act of 2008, H.R. 3221, in September 2008. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20%.

§49.15. Manner and Place of Filing All Required Documentation.

(a) All Applications, letters, documents, or other papers filed with the Department must be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(b) All notices, information, correspondence and other communications under this chapter shall be deemed to be duly given if delivered or sent and effective in accordance with this subsection. Such correspondence must reference that the subject matter is pursuant to the Tax Credit Program and must be addressed to the Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or for hand delivery or courier to 221 East 11th Street, Austin, Texas 78701 or more current address of the Department as released on the Department's website. Every such correspondence required or contemplated by this chapter to be given, delivered or sent by any party may be delivered in person or may be sent by courier, telecopy, express mail, telex, telegraph, electronic submission or postage prepaid certified or registered air mail (or its equivalent under the laws of the country where mailed), addressed to the party for whom it is intended, at the address specified in this subsection. Regardless of method of delivery, documents must be received by the Department no later than 5:00 p.m. for the given deadline date. Notice by courier, express mail, certified mail, or registered mail will be considered received on the date it is officially recorded as delivered by return receipt or equivalent. Notice by telex or telegraph will be deemed given at the time it is recorded by the carrier in the ordinary course of business as having been delivered, but in any event not later than one business day after dispatch. Notice not given in writing will be effective only if acknowledged in writing by a duly authorized officer of the Department.

(c) If required by the Department, Development Owners must comply with all requirements to use the Department's website to provide necessary data to the Department.

§49.16. Waiver and Amendment of Rules.

(a) The Board, in its discretion, may waive any one or more of the rules provided herein if the Board finds that a waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

(b) The Department may amend this chapter contained herein at any time in accordance with Chapter 2001, Texas Government Code.

§49.17. Department Responsibilities.

(a) The Department shall make all required notifications pursuant to Chapter 2306 of the Texas Government Code.

(b) In accordance with §§2306.6724, 2306.67022 and §42(m)(1) regarding the deadlines for allocating Housing Tax Credits the following shall apply:

(1) Not later than September 30 of each year, the Department shall prepare and submit to the Board for adoption the draft QAP required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the Housing Tax Credit program;

(2) The Board shall adopt and submit to the Governor the QAP not later than November 15 of each year;

(3) The Governor shall approve, reject, or modify and approve the QAP not later than December 1 of each year;

(4) The Board shall annually adopt a manual, corresponding to the QAP, to provide information on how to apply for Housing Tax Credits;

(5) Applications for Housing Tax Credits to be issued a Commitment during the Application Round in a calendar year must be submitted to the Department not later than March 1;

(6) The Board shall review the recommendations of Department staff regarding Applications and shall issue a list of approved Applications each year in accordance with the Qualified Allocation Plan not later than June 30; and

(7) The Board shall approve final commitments for allocations of Housing Tax Credits each year in accordance with the QAP not later than July 31, unless unforeseen circumstances prohibit action by that date. In any event, the Board shall approve final Commitments for allocations of Housing Tax Credits each year in accordance with the QAP not later than September 30. Department staff will subsequently issue Commitments based on the Board's approval. Final Commitments may be conditioned on various factors approved by the Board, including resolution of contested matters in litigation.

(c) With respect to site demographics information, the general rule is for the Department to use current State Demographer information. If the State Demographer information is not available as of the date the Application Acceptance Period opens the Executive Director may approve the use of prior year site demographics.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005289
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.102

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.102, Retailer Transmitting Order to Another Retailer. The amendment clarifies existing policy and adds statutory references.

Section 45.102 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist.

Dexter K. Jones, Director of the Compliance and Marketing Practices Division, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

The proposed amendment will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Jones has also determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because restrictions on practices that could constitute unlawful subterfuge operations will be clarified. In addition, the public will benefit because the restrictions on practices in the rule reinforce statutory prohibitions on retailers selling to other retailers for purposes of resale.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on September 29, 2010 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. Open discussion will not be permitted and staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the code, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

The proposed amendment affects Alcoholic Beverage Code §§5.31, 11.05, 11.06, 22.01(2), 22.15, 24.01(a)(2), 25.01(1), 26.01(a), 27.01, 28.01(2), 30.01, 32.08(a), 61.04, 61.06, 61.71(a)(15), 69.01, 71.01 and 109.53, and Government Code §2001.039.

§45.102. Retailer Transmitting Order to Another Retailer.

(a) This section relates to Alcoholic Beverage Code §§5.31, 11.05, 11.06, 22.01(2), 22.15, 24.01(a)(2), 25.01(1), 26.01(a), 27.01, 28.01(2), 30.01, 32.08(a), 61.04, 61.06, 61.71(a)(15), 69.01, 71.01 and 109.53, and Government Code §2001.039.

(b) [~~(a)~~] In this section the term "retailer" means [~~shall mean~~] any person engaged in the business of selling any alcoholic beverages to consumers in any state, including Texas.

(c) In this section the term "Texas retail permittee or licensee" means any person who holds a permit or license issued by the commission that authorizes the sale of alcoholic beverages to consumers in Texas.

[~~(b) A retailer shall not enter into any agreement, or join any association or organization, which imposes a duty on such retailer to take an order for any alcoholic beverages and collect the price of such alcoholic beverage and cause such order for an alcoholic beverage to be transmitted to another retailer for delivery by such other retailer, or which imposes a duty on such retailer to deliver an alcoholic beverage on an order that was taken by another retailer.~~]

[~~(c) A retailer shall not take an order for an alcoholic beverage and collect the price of such alcoholic beverage with an agreement that such order for an alcoholic beverage will be transmitted to another retailer for delivery by such other retailer.~~]

[~~(d) A retailer shall not deliver an alcoholic beverage when the order for and payment for such alcoholic beverage was received by another retailer.~~]

(d) [~~(e)~~] A Texas retail permittee or licensee who pays [~~The act of a retailer of paying~~] to any person a portion or percent of the amount of money collected by such Texas retail permittee or licensee [~~retailer~~] on an order for an alcoholic beverage that is to be transmitted to another retailer for delivery by such other retailer shall be deemed to have allowed its [~~be an act of allowing the~~] permit or license [~~of such retailer~~] to be used by a person other than the person to whom the permit or license was issued.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005320
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 206-3491

♦ ♦ ♦

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.308

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.308 ("Cash Five" On-Line Game). The purpose of the amendments is to delete the provision relating to the number of plays that may be purchased on one ticket; and to correct an erroneous reference. Specifically, in subsection (c), the sentence, "A player may purchase up to five plays on one ticket." has been deleted; and subsection (e)(4) is amended to change the reference from §466.4075 to §466.408.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Michael Anger, Director of Lottery Operations, has determined that for each year of the first five years the proposed rule, as amended, will be in effect, the public benefit anticipated will be that the rule will be consistent with other on-line game rules; and that Cash Five players will have increased flexibility with regard to the number of plays on a single Cash Five on-line game ticket, should the Commission develop the technology to allow a greater number of plays on a single ticket; and the public will have the correct statutory reference in the rule.

The Commission requests comments on the proposed rule amendments from any interested person. Comments on the proposed rule amendments may be submitted to Pete Wassdorf, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 1:00 p.m. on Thursday, October 14, 2010, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.308. "Cash Five" On-Line Game.

(a) Cash Five. A Texas Lottery on-line game to be known as "Cash Five" is authorized to be conducted by the executive director under the following rules and under such further instructions and directives as the executive director may issue in furtherance thereof. If a conflict arises between this rule and §401.304 of this title (relating to On-Line Game Rules (General)), this section shall have precedence.

(b) Definitions. In addition to the definitions provided in §401.301 of this title (relating to General Definitions), and unless the context in this rule otherwise requires, the following definitions apply.

(1) Advance Play--A player may purchase a Cash Five ticket for any of the five Cash Five drawings immediately following the current drawing. Example: On Monday, before the drawing, a Cash Five ticket can be purchased for Tuesday, Wednesday, Thursday, Friday, or Saturday drawings.

(2) Multi draw--A player may purchase a Cash Five ticket for up to 12 consecutive drawings beginning with the current draw.

(3) Number--Any play integer from one through 37 inclusive.

(4) Play--The five numbers selected on each play board and printed on the ticket.

(5) Play board--A field of the 37 numbers found on the playslip.

(6) Playslip--An optically readable card issued by the Texas Lottery used by players of Cash Five to select plays. There shall be five play boards on each playslip identified as A, B, C, D, and E. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(c) Price of ticket. The price of each Cash Five play shall be $1.00. [~~A player may purchase up to five plays on one ticket.~~] Multiple draws are available for up to 12 consecutive draws beginning with the current draw. A player may purchase a Cash Five ticket for advance play.

(d) Play for Cash Five.

(1) Type of play. A Cash Five player must select five numbers in each play or allow number selection by a random number generator operated by the computer, referred to as Quick Pick. A winning play is achieved only when two, three, four, or five of the numbers selected by the player match, in any order, the five winning numbers drawn by the lottery.

(2) Method of play. The player may use playslips to make number selections. The on-line terminal will read the playslip and issue ticket(s) with corresponding plays. If a playslip is not available, the on-line retailer may enter the selected numbers via the keyboard. However, the retailer shall not accept telephone or mail-in requests to manually enter selected numbers. A player may leave all play selections to a random number generator operated by the computer, commonly referred to as Quick Pick.

(3) One prize per play. The holder of a winning ticket may win only one prize per play in connection with the winning number drawn and shall be entitled only to the highest prize category won by those numbers.

(e) Prizes for Cash Five.

(1) Prize amounts. The first, second, and third prize amounts, for each drawing, paid to each Cash Five player who selects a matching combination of numbers will vary due to a pari-mutuel calculation. The calculation of a prize shall be rounded down so that prizes can be paid in multiples of whole dollars. Each prize category breakage will carry forward to the next drawing for each respective prize category. The prize amounts are based on the total amount in the prize category for that Cash Five drawing distributed equally over the number of matching combinations in each prize category. The fourth prize is a guaranteed $2 prize.
Figure: 16 TAC §401.308(e)(1) (No change.)

(2) Prize pool. The prize pool for Cash Five prizes shall be a minimum of 50% of Cash Five sales. This pool will be allocated into two components. The first component consists of the funds necessary to pay all the fourth prize category $2 prize winners. The first component is obtained by an allocation from the Cash Five prize pool to the fourth prize category so that all of the fourth prize category shares will each receive the guaranteed $2 prize. The second component contains the remaining prize pool funds after subtraction of the first component allocation and will be referred to as the "residual prize pool". The residual prize pool will be allocated to the first, second, and third prize categories according to the percentages applicable for each prize category.

(3) Prize categories.

(A) First prize--The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of all five numbers of the five numbers drawn (in any order). Each first prize will be paid in one lump sum payment. The five of five first prize of $600 to $999,999 must be claimed at a Lottery claim center. Five of five prizes of $1,000,000 or larger must be claimed at the Lottery Commission headquarters in Austin. The total prize category contribution for a drawing will include the following.

(i) The direct prize category contribution shall be 40.15% of the residual prize pool for the drawing.

(ii) If the first prize is not won by a Cash Five player from the drawing, the direct prize category contribution will roll into the second prize category.

(B) Second prize--The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any four of the five numbers drawn (in any order). The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 18.08% of the residual prize pool for the drawing.

(ii) If the second prize is not won by a Cash Five player from the drawing, the direct prize category contribution will roll into the third prize category.

(C) Third prize--The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any three of the five numbers drawn (in any order). The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 41.77% of the residual prize pool for the drawing.

(ii) If the third prize is not won by a Cash Five player from the drawing, the direct prize category contribution will carry forward to the prize pool for the next drawing.

(D) Fourth prize--The prize amount is a guaranteed $2.

(4) Unclaimed Prizes [~~Prize Fund~~]. In the event any player who has a valid winning ticket does not claim the prize within 180 days after the drawing in which the prize was won, the prize amount shall be deposited in accordance with Government Code, §466.408. [~~to the credit of the Texas Department of Health state-owned multicategorical teaching hospital account or the tertiary care facility account as prescribed in Government Code, §466.4075.~~]

(f) Ticket purchases.

(1) Cash Five tickets may be purchased only at a licensed location from a lottery retailer authorized by the lottery director to sell on-line tickets.

(2) Cash Five tickets shall show the player's selection of numbers, or Quick Pick (QP) numbers, boards played, drawing date, and serial numbers.

(3) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed.

(4) Except as provided in subsection (d)(2) of this section, Cash Five tickets must be purchased using official Cash Five playslips. Playslips which have been mechanically completed are not valid. Cash Five tickets must be printed on official Texas lottery paper stock and purchased at a licensed location through an authorized Texas lottery retailer's on-line terminal.

(g) Drawings.

(1) The Cash Five drawings shall be held each week on Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday evenings at 9:59 p.m. Central Time except that the drawing schedule may be changed by the executive director, if necessary.

(2) The drawings will be conducted by lottery officials.

(3) Each drawing shall determine, at random, five winning numbers in accordance with Cash Five drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the lottery in accordance with the drawing procedures. The winning numbers shall be used in determining all Cash Five winners for that drawing.

(4) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by at least one lottery security representative, the drawing supervisor, and the independent certified public accountant immediately prior to a drawing and immediately after the drawing.

(5) A drawing will not be invalidated based on the financial liability of the lottery.

(h) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005279
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 344-5275

♦ ♦ ♦

16 TAC §401.315

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.315 ("Mega Millions" On-Line Game Rule). The purpose of the proposed amendments is to authorize a non-multiplied guaranteed second tier prize when a Megaplier option is purchased. Specifically, subsection (b)(7) has been amended to clarify that the multiplier does not apply to the second tier prize or the grand prize and that the second tier prize is $1,000,000 if the Megaplier feature is purchased. Subsection (b)(12) is changed to eliminate the number of playboards on a playslip. Subsection (c) is changed to delete the limitation of five plays per ticket, delete the number of plays per consecutive draw, and to reword the cost of a Megaplier play. Subsection (e) is amended to define the "Megaplier" feature rather than the "multiplier" feature, and to clarify that the multiplier number will be used to multiply the value of the prizes for the third through the ninth tiers. Subsection (e)(4) is re-titled "Application of multiplier number" and is divided into three subparagraphs: (A) which specifies that the multiplier will operate on the third through the ninth tiers; (B) which restates that the second tier prize is $1,000,000, if $1 has been paid for the Megaplier feature; and (C) which restates that the Megaplier feature does not apply to the grand prize/jackpot.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility

Analysis is not required because the amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Michael Anger, Lottery Operations Director, has determined that for each year of the first five years the amendments would be in effect, the public benefit anticipated from the amendments is that the Megaplier modifications and promotions will offer added potential prize benefits to players of the feature. It is anticipated that product enhancements and promotional support will increase interest and participation of players.

The Commission requests comments on the amendments from any interested person. Comments on the proposed amendments may be submitted to Pete Wassdorf, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 2:00 p.m. on Thursday, October 14, 2010, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under the specific requirement of Texas Government Code §466.015, which provides the Commission with the authority to adopt rules governing the operation of the lottery. The amendments are also proposed under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement multijurisdictional agreements pursuant to Texas Government Code §466.451, with the Multistate Lottery Association (MUSL) [the Powerball states] and the participating Mega Millions states.

§401.315. "Mega Millions" On-Line Game Rule.

(a) Mega Millions. A Texas Lottery on-line game to be known as "Mega Millions" is authorized to be conducted by the executive director under the following rules and under such further instructions and directives as the executive director may issue in furtherance thereof, and pursuant to the requirements of the multijurisdiction agreement between all participating party lotteries. Consistent with this rule, the executive director is specifically authorized to issue all such further instructions and directives as the executive director may deem necessary or prudent, to implement these rules and to comply with the multijurisdictional games. If a conflict arises between this section and §401.304 of this title (relating to On-Line Game Rules (General)), this section shall have precedence. The purpose of the Mega Millions game is the generation of revenue for party lotteries through the operation of a specially-designed multijurisdiction lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings.

(b) Definitions. In addition to the definitions provided in §401.301 of this title (relating to General Definitions), and unless the context in this section otherwise requires, the following definitions apply.

(1) Advertised jackpot--The estimated annuitized grand/jackpot amount the Mega Millions directors establish for each Mega Millions drawing. The advertised estimated annuitized grand/jackpot is an amount that would be paid in 26 annual installments.

(2) Annual payment option--The option to receive annual installment payments that can be selected by the player at the time of ticket purchase. This option is chosen automatically for the player if no payment option is selected by the player at time of ticket purchase. The option is to be paid in 26 annual payments, in the event the player has a valid winning grand/jackpot ticket and consistent with the provisions of the rule. The term "annual payment option" is synonymous with the terms "annual option", "annuitized option", and "annuity option".

(3) Cash value option--An election a player must make at the time the player purchases a ticket in order to be paid a single payment of the player's share of the grand/jackpot amount, in the event the player has a valid winning grand/jackpot ticket and consistent with the provisions of the rule. The term "cash value option" is synonymous with the terms "cash option" and "net present value option".

(4) Executive director--The executive director of the Texas Lottery Commission. The term "executive director" is synonymous with the term "director".

(5) Grand/jackpot prize amount--The amount awarded for matching, for one play, all of the numbers drawn from both fields. If more than one player from all participating lottery jurisdictions has selected all of the numbers drawn, the grand/jackpot prize amount shall be divided among those players. The amount actually paid will depend on the payment option elected at the time of purchase, consistent with the provisions of the rule.

(6) Multijurisdiction agreement--The amended and restated multijurisdiction agreement regarding the Mega Millions game, or any subsequent amended agreement, signed by the party lotteries and including the finance and operations procedures for Mega Millions, and on-line drawing procedures for Mega Millions.

(7) Megaplier [~~Multiplier~~] feature--A Mega Millions game feature, known as "Megaplier", by which a player, for an additional wager of $1 per play, can increase the guaranteed prize amount or pari-mutuel prize amount, as applicable, for the third through ninth tier prizes, [~~excluding the grand/jackpot prize by a factor of two, three, or four times~~] depending on [~~upon~~] the multiplier number that is drawn prior to the Mega Millions drawing. There is no multiplier for the grand/jackpot prize or for the second tier prize (the second tier prize is a guaranteed $1,000,000 prize).

(8) Number--Any play integer from one through 56.

(9) Party lotteries--One or more of the lotteries established and operated pursuant to the laws of the jurisdictions participating in Mega Millions or any other lottery which becomes a signatory to the Mega Millions agreement.

(10) Play--The six numbers selected on each playboard and printed on the ticket. Five numbers are selected from the first field of 56 numbers and one number is selected from the second field of 46 numbers.

(11) Playboard--Two fields, the first field of 56 numbers and the second field of 46 numbers, each found on the playslip.

(12) Playslip--An optically readable card issued by the commission used by players of Mega Millions to select plays and to elect to participate in the multiplier feature. [~~There shall be five playboards on each playslip identified at A, B, C, D, and E.~~] A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(c) Price of ticket. The price of each Mega Millions play shall be $1. [~~A player may purchase up to five plays on one ticket.~~] Multiple draws are available for [~~up to 10~~] consecutive draws beginning with the current draw. From time to time, the executive director may authorize the sale of Mega Millions tickets at a discount for promotional purposes. For [~~Additionally, a multiplier feature, Megaplier, is available~~

~~for~~] an additional $1 per play, a player may purchase the Megaplier feature.

(d) Play for Mega Millions.

(1) Type of play. A Mega Millions player must select five numbers from the first field of numbers from 1 through 56 and an additional one number from the second field of numbers from 1 through 46 in each play or allow number selection by a random number generator operated by the terminal, referred to as Quick Pick.

(2) Method of play. The player may use playslips to make number selections. The terminal will read the playslip and issue ticket(s) with corresponding plays. If a playslip is not available or if a player is unable to complete a playslip, the retailer may enter the selected numbers via the keyboard. However, the retailer shall not accept telephone or mail-in requests to issue a ticket. The use of mechanical, electronic, computer generated or any other non-manual method of marking a playslip is prohibited. A player may leave all play selections to a random number generator operated by the terminal, referred to as Quick Pick.

(3) One prize per play. The holder of a winning ticket may win only one prize per play in connection with the winning numbers drawn and shall be entitled only to the highest prize category won by those numbers.

(e) Megaplier feature play [~~Multiplier Feature~~].

(1) Type of play. A Mega Millions player may elect to participate in the [~~multiplier feature, known as~~] "Megaplier" feature[~~,~~] by paying [~~wagering~~] an additional $1 [~~$1.00~~] per play at the time of his/her Mega Millions ticket purchase.

(2) Megaplier [~~Multiplier~~] drawing. A random drawing will occur before every Mega Millions drawing to determine one multiplier number for that drawing. The multiplier number that will be selected will be either, a 2, 3, or 4. The multiplier number drawn will be used to multiply the value of the prizes for the third through ninth tiers. In the event the multiplier drawing does not occur prior to the Mega Millions drawing, the multiplier number will be a 4.

(3) Multiplier number frequency. The one multiplier number will be selected from a field of numbers according to the following relative frequencies:
Figure: 16 TAC §401.315(e)(3) (No change.)

(4) Application of multiplier number.

(A) Third through ninth tier. The multiplier number selected is the number that is used to increase the prize amount, for the third through the ninth tier. A third through the ninth tier prize winner who chose to participate in the Megaplier feature by paying an additional $1 per play at the time of the player's Mega Millions ticket purchase is paid a prize in the amount of the guaranteed prize amount or the pari-mutuel prize amount, as applicable, multiplied by the multiplier number for that drawing.

(B) Second tier prize. The second tier prize will always be a $1,000,000 prize, if the player selects and pays for the Megaplier feature (i.e., the multiplier number drawn does not apply to, affect or alter the second tier prize).

(C) Grand/Jackpot prize. The Megaplier feature does not apply to the grand/jackpot prize.

~~[(4) Selection of multiplier number. The multiplier number selected is the number that is used to increase the prize amount, other than the grand/jackpot prize. A prize winner who chose to participate in the multiplier feature by wagering an additional $1 per play at the time of the player's Mega Millions ticket purchase is paid a prize in the amount of the guaranteed prize amount or the pari-mutuel prize amount, as applicable, other than the grand/jackpot prize multiplied by the multiplier number for that drawing.]~~

(5) Special Megaplier Promotions. The Mega Millions Group may periodically agree to change one or more of the Megaplier numbers in order to conduct special Megaplier promotions during specified time periods. The relative frequency of the numbers may be changed and/or additional numbers may be added at the discretion of the executive director from time to time for promotional purposes. Such change shall be announced by public notice. The executive director will announce the promotion by publication on the agency web site and any other means deemed appropriate to inform the public.

(f) Prizes for Mega Millions.

(1) Prize amounts. The prize amounts, for each drawing, paid to each Mega Millions winner who selects matching combinations of numbers, with the exception of the grand/jackpot prize, are guaranteed prizes or pari-mutuel prize amounts in accordance with paragraph (3)(H) of this subsection.

(2) Prize fund. The prize fund for Mega Millions prizes is estimated to be 50% of Mega Millions sales, but may be higher or lower based upon the number of winners at each guaranteed prize level, as well as the funding required to be contributed to the starting advertised annuitized guaranteed grand/jackpot of $12 million.

(3) Prize categories.

(A) Matrix of 5/56 and 1/46 with 50 percent estimated prize fund.
Figure: 16 TAC §401.315(f)(3)(A) (No change.)

(B) Grand/jackpot prize payments.

(i) The portion of the prize money allocated from the current Mega Millions prize fund for the grand/jackpot prize, plus any previous portions of prize money allocated to the grand/jackpot prize category in which no matching tickets were sold and money from any other available source pursuant to a guaranteed or estimated first prize amount announcement will be divided equally among all grand/jackpot prize winners in all participating lotteries matching all five of five Mega Millions winning numbers drawn for field 1 and the one Mega Millions number drawn for field 2. Prior to each drawing, the Mega Millions grand/jackpot prize amount that would be paid in 26 annual installments will be advertised. The advertised annuitized grand/jackpot prize amount shall be estimated and established based upon sales and the annuity factor established for the drawing. The annuitized grand/jackpot prize to be awarded for each Mega Millions play matching all five (5) of the five (5) Mega Millions winning numbers draw for field 1 and the one (1) Mega Millions winning number drawn for field two (2) shall be the amount equivalent to the highest whole $1 million annuity that is funded by the amount in that portion of the prize fund allocated to the grand/jackpot prize category. In no event, however, shall the annuitized grand/jackpot prize be less than $12 million.

(ii) If in any Mega Millions drawing there are no Mega Millions plays which qualify for the grand/jackpot prize category, the portion of the prize fund allocated to such grand/jackpot prize category shall remain in the grand/jackpot prize category and be added to the amount allocated for the grand/jackpot prize category in the next consecutive Mega Millions drawing.

(iii) If there are multiple matching tickets sold of the Mega Millions grand/jackpot prize from among all participating lotteries, then the prize winner(s) in Texas will be paid in accordance with their selection of cash option or annual payment option made at the time of ticket purchase.

(iv) In the event of a prize winner who selects the cash value option, the prize winner's share will be paid in a single payment upon completion of internal validation procedures. The player in Texas must make the election of the cash value option at the time of ticket purchase. If the player does not make the election at the time of ticket purchase, the share will be paid in accordance with clause (vi) of this subparagraph. The cash value of the grand/jackpot prize will be the amount determined by the highest $1 million annuity that is funded by the amount of that portion of the prize fund allocated to the grand/jackpot prize category, divided by the annuity factor established for the draw date divided by the number of grand/jackpot prize winners.

(v) Funds for the initial payment of an annuitized option prize or the cash value option prize will be made available to the Texas Lottery from all participating party lotteries as soon as practicable on the business day falling fourteen (14) calendar days after the date of the winning drawing.

(vi) Annual payment option grand/jackpot prizes shall be paid in 26 annual installments upon completion of internal validation procedures. The initial payment shall be paid upon completion of internal validation procedures. The subsequent 25 payments shall be paid annually to coincide with the month of the Federal auction date at which the bonds were purchased to fund the annuity. All of the twenty-five (25) remaining payments shall be equal and must be in $1,000 denominations to facilitate the securities purchase. The full cash equivalent prize shall be awarded to the prize winner, such that the prize winner receives equal payments in $1,000 increments for installments 2 through 26, and any residual cash shall be added to the first annual payment. In no event shall the first cash payment exceed the remaining equal installments by more than $25,000. The total of the first payment, plus the cost of investments shall equal the total cash equivalent amount in clause (iv) of this subparagraph. All such payments shall be made within seven days of the anniversary of the annual auction date.

(vii) The grand/jackpot prize must be claimed at the Austin claim center regardless of the prize amount.

(C) Second through ninth level prizes.

(i) Second Prize: Mega Millions plays matching five of the five Mega Millions winning numbers drawn for field 1 (in any order), but not matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a second prize of $250,000.

(ii) Third Prize: Mega Millions plays matching four of the five Mega Millions winning numbers drawn for field 1 (in any order) and the Mega Millions winning number drawn for field 2 shall be entitled to receive a third prize of $10,000.

(iii) Fourth Prize: Mega Millions plays matching four of the five Mega Millions winning numbers drawn for field 1 (in any order) but not matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a fourth prize of $150.

(iv) Fifth Prize: Mega Millions plays matching three of the five Mega Millions winning numbers drawn for field 1 (in any order) and the Mega Millions winning number drawn for field 2 shall be entitled to receive a fifth prize of $150.

(v) Sixth Prize: Mega Millions plays matching two of the five Mega Millions winning numbers drawn for field 1 (in any order) and the Mega Millions winning number drawn for field 2 shall be entitled to receive a sixth prize of $10.

(vi) Seventh Prize: Mega Millions plays matching three of the five Mega Millions winning numbers drawn for field 1 (in any order) and not matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a seventh prize of $7.

(vii) Eighth Prize: Mega Millions plays matching one of the five Mega Millions winning numbers drawn for field 1 and the Mega Millions winning number drawn for field 2 shall be entitled to receive an eighth prize of $3.

(viii) Ninth Prize: Mega Millions plays matching no numbers of the five Mega Millions winning numbers drawn for field 1 but matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a ninth prize of $2.

(ix) Each Mega Millions second through ninth prize shall be paid in one payment.

(D) In a single drawing, a player may win in only one prize category per single Mega Millions play in connection with Mega Millions winning numbers, and shall be entitled only to the highest prize.

(E) For purpose of prize calculation with respect to any Mega Millions pari-mutuel prize, the calculation shall be rounded down so that prizes shall be paid in multiples of one dollar.

(F) With respect to the Mega Millions annuitized grand/jackpot prize, the prize amount paid shall be the highest fully funded multiple of one million dollars based solely on the cash option grand/jackpot prize amount as determined by subparagraph (B)(iv) of this paragraph.

(G) Subject to the laws and rules governing each party lottery, the number of prize categories and the allocation of the prize fund among the prize categories may be changed at the discretion of the directors, for promotional purposes. Such change shall be announced by public notice.

(H) Prize liability cap. Notwithstanding any provision in the rule to the contrary, should total prize liability (exclusive of grand/jackpot prize carry forward) exceed 300 percent of draw sales or 50 percent of draw sales plus $50,000,000, whichever is less, (both hereinafter referred to as the "liability cap"), the second through fifth prizes shall be paid on a pari-mutuel rather than guaranteed prize basis, provided, however, that in no event shall the pari-mutuel prize be greater than the guaranteed prize. The amount to be used for the allocation of such pari-mutuel prizes (two through five) shall be the liability cap less the amount paid for the grand/jackpot prize and prize levels six through nine.

(g) Subscription sales. A subscription sales program may be offered, at the discretion of the executive director.

(h) Ticket purchases.

(1) Mega Millions tickets may be purchased in Texas only at a licensed location from a Texas Lottery retailer authorized by the lottery operations director to sell on-line tickets. No Mega Millions ticket purchased outside Texas may be presented to a Texas Lottery retailer for payment within Texas.

(2) Mega Millions tickets shall show the player's selection of numbers or Quick Pick (QP) numbers, election of the Megaplier [~~multiplier~~] feature, Megaplier boards played, drawing date, grand/jackpot payment option, and validation and reference numbers.

(3) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed. Neither a party lottery nor its sales agents shall be responsible for lost or stolen tickets.

(4) Except as provided in subsection (d)(2) of this section, Mega Millions tickets must be purchased using official Mega Millions playslips. Playslips which have been mechanically completed are not valid. Mega Millions tickets must be printed on official Texas Lottery paper stock and purchased at a licensed location through an authorized Texas Lottery retailer's terminal.

(5) In purchasing a ticket issued for Mega Millions, the player agrees to comply with and be bound by all applicable statutes, administrative rules and regulations, and procedures of the party lottery of the state in which the Mega Millions ticket is issued, and by directives and determinations of the director of that party lottery. Additionally, the player shall be bound to all applicable provisions in the Mega Millions Finance and Operations Procedures. The player agrees, as its sole and exclusive remedy, that claims arising out of a Mega Millions ticket can only be pursued against the party lottery of ticket purchase. Litigation, if any, shall only be maintained within the state in which the Mega Millions ticket was purchased and only against the party lottery that issued the ticket. Nothing in this rule shall be construed as a waiver of any defense or claim the Texas Lottery may have in the event a player pursues litigation against the Texas Lottery, its officers, or employees.

(i) Drawings.

(1) The Mega Millions drawings shall be held at the time(s) and location set out in the multijurisdiction agreement.

(2) Each drawing shall determine, at random, the six winning numbers in accordance with the Mega Millions drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the Commission in accordance with the drawing procedures. The winning numbers shall be used in determining all Mega Millions winners for that drawing.

(3) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined immediately prior to a drawing and immediately after the drawing.

(j) Prize winners. The name and city of the winner of the grand/jackpot prize, or second prize, will be disclosed in a news conference or in a news release and the winner may be requested to participate in a news conference. If a winner claims a Mega Millions grand/jackpot or second prize as a legal entity, the entity shall provide the name of a natural person who is a principal of the legal entity. This natural person may be required to be available for appearance at any news conference regarding the prize and may be featured in any party lottery's releases.

(k) Unclaimed Prizes for winning Mega Millions tickets for which no claim or redemption is made within the specified claim period for each respective party lottery, the corresponding prize monies shall be returned to the other party lotteries in accordance with procedures for the reconciliation of prize liability pursuant to the multijurisdiction agreement and as may be agreed to from time to time by the directors of the party lotteries.

(l) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award(s).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005278
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 344-5275

♦ ♦ ♦

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES
SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §402.604

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.604 (Delinquent Purchaser). The purpose of the proposed amendments is to provide clarification of standards for enforcement of Texas Occupations Code §2001.218, Payment Due. Specifically, at subsection (f), new paragraphs (1) and (2) have been added, setting forth requirements for payments by check from a licensee listed on the delinquent purchaser list.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is to provide licensees with a clear understanding of the requirements of accepting payments from licensees listed on the delinquent purchaser list.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Thursday, October 14, 2010, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code Chapter 2001.

§402.604. Delinquent Purchaser.

(a) - (e) (No change.)

(f) Before the sale of any equipment or supplies, a manufacturer or distributor must confirm whether the intended purchaser is on the Delinquent Purchaser List. Any licensee or unit on the Delinquent Purchaser List must provide immediate payment upon delivery of the equipment or supplies.

(1) A manufacturer or distributor who receives a check for payment from a licensee or unit listed on the Delinquent Purchaser List must deposit the check into a bank account within three business days of the receipt of the payment.

(2) The licensee or unit must have adequate funds to cover the check for payment in its bingo account on the date the check is initially presented to its financial institution for payment.

(g) - (n) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005274
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 344-5012

♦ ♦ ♦

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §7.7, §7.8

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §7.7 and §7.8, concerning Degree Granting Colleges and Universities Other Than Texas Public Institutions. The intent of the amendments to these sections is to clarify the Commissioner's authority with respect to an institution operating under a Certificate of Authorization (CoAu) or a Certificate of Authority (CoA) in the event that the institution's Certificate of Approval or Letter of Exemption issued by the Texas Workforce Commission (TWC) is revoked or denied. The Texas Workforce Commission either authorizes all institutions to operate in Texas or the institution is granted a Letter of Exemption from Chapter 132 of the Texas Education Code. A requirement for a CoA or CoAu is that the institution must have authority from TWC to operate in the state, prior to obtaining degree granting authority. Presently, Chapter 7 rules allows the Board to take action against an institution that has had its Certificate of Approval revoked, only after the recognized accrediting agency revokes their accreditation. The proposed changes will enable the Coordinating Board to act when an action is initiated by the Texas Workforce Commission.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years there will be no fiscal implications for state or local governments as a result of amending the sections.

Dr. Stephenson has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be to clarify the Commissioner's authority with respect to an institution operating under a Certificate of Authorization or a Certificate of Authority in the event that the institution's Certificate of Approval or Letter of Exemption issued by the Texas Workforce Commission (TWC) is revoked or denied. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at macgregor.stephenson@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the provisions of Texas Education Code, Chapter 61, Subchapters G and H which describes the Board's role in Regulation of Private Postsecondary Educational Institutions and Out-of-State Public Institutions, as well as Texas Education Code, Chapter 132, which provides the Coordinating Board's Role in the regulation of Career Schools and Colleges.

The proposed amendments would affect Texas Education Code, Chapter 61, Subchapters G and H.

§7.7. Institutions Accredited by Board Recognized Accreditors.

An institution which does not meet the definition of institution of higher education contained in Texas Education Code §61.003, is accredited by a Board recognized accreditor, and is interested in offering degrees or courses leading to degrees in the State of Texas must follow the requirements in paragraphs (1) - (5) of this section.

(1) - (2) (No change.)

(3) Grounds for Revocation of Certificate of Authorization.

(A) The Institution no longer holds a Certificate of Approval or Letter of Exemption issued by the Texas Workforce Commission.

(B) [~~(A)~~] Institution loses accreditation from Board recognized accreditor.

(C) [~~(B)~~] Institution's Accreditor is removed from the U.S. Department of Education or the Coordinating Board's list of approved accreditors.

(D) [~~(C)~~] Institution fails to comply with data reporting or substantive change notification requirements.

(E) [~~(D)~~] Institution offers degrees for which it does not have accreditor approval.

(4) - (5) (No change.)

§7.8. Institutions Not Accredited by a Board Recognized Accreditor.

An institution which is not accredited by a board recognized accreditor and which does not meet the definition of institution of higher education contained in Texas Education Code, §61.003, must follow either the Certificate of Authority process or Alternative Certificate of Authority process in paragraphs (1) - (14) of this section in order to offer degrees or courses leading to degrees in the state of Texas. Institutions are encouraged to contact the Coordinating Board staff before filing a formal application.

(1) - (5) (No change.)

(6) Grounds for Revocation of Certificate of Authority [~~Authorization~~].

(A) The Institution no longer holds a Certificate of Approval or Letter of Exemption issued by the Texas Workforce Commission.

(B) [~~(A)~~] Institution fails to comply with substantive change notification and data reporting requirements as outlined in §7.11 of this chapter (relating to Changes of Ownership and Other Substantive Changes) and §7.13 of this chapter (relating to Data Reporting), respectively.

(C) [~~(B)~~] Institution offers degrees for which it does not have Board approval.

(D) [~~(C)~~] Institution fails to maintain the Standards of Operation as defined in §7.4 of this chapter.

(E) [~~(D)~~] Failure to comply with paragraph (3)(D) of this section.

(7) - (14) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005319
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 28, 2010
For further information, please call: (512) 427-6114

♦ ♦ ♦

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 75. CURRICULUM
SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING DRIVER EDUCATION STANDARDS OF OPERATION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES

19 TAC §§75.1001 - 75.1003, 75.1005, 75.1006

The Texas Education Agency (TEA) proposes amendments to §§75.1001-75.1003, 75.1005, and 75.1006, concerning driver education. The sections address driver education standards of operation for public schools, education service centers, and colleges or universities. The proposed amendments would reflect changes resulting from the 81st Texas Legislature, 2009, and incorporate changes to reflect driver education industry standards.

House Bill (HB) 339 and HB 2730, 81st Texas Legislature, 2009, amended the Texas Education Code (TEC), §29.902, to require a school district to consider offering a driver education and traffic safety course during each school year. HB 2730 also permits the district to charge a fee for the course or contract with a licensed driver education school.

HB 339 and HB 2730, 81st Texas Legislature, 2009, amended the TEC, §1001.101, to require a certain number of hours of behind-the-wheel and observation instruction and increase the total hours of behind-the-wheel driving instruction a minor receives by adding 20 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night.

Senate Bill (SB) 1317, 81st Texas Legislature, 2009, amended the TEC, §1001.101, to require the commissioner by rule to establish the curriculum and designate the educational materials to be used in a driver education course for minors and adults.

SB 1967, 81st Texas Legislature, 2009, added the TEC, §1001.1025, to require motorcycle awareness to be included in the curriculum of any driver education course or driving safety course.

SB 1107 and HB 339, 81st Texas Legislature, 2009, added the TEC, §1001.110, to state that the commissioner by rule shall require information relating to driving distractions to be included in the curriculum of any driver education course or driving safety course.

HB 339 and HB 2730, 81st Texas Legislature, 2009, added the TEC, §1001.257, to allow the commissioner to deny an instructor license if a person has accumulated six or more penalty points on his or her driving record during the preceding 36-month period.

The proposed amendments to 19 TAC Chapter 75, Subchapter AA, would update the rules to reflect statutory changes. In addition, informal stakeholder discussions were held from July 2009-May 2010 with school districts and industry members. A draft of the proposed amendments was circulated to interested parties and comments solicited. Specifically, the following changes would be made.

Sections 75.1001, Administration and Supervision, 75.1002, Driver Education Teachers, and 75.1003, Teaching Assistants, would be amended to reduce the number of penalty points allowed on the personal driving records of driver education teachers, teaching assistants, teaching assistants (full or in-car only), and student instructors from 10 to 6 within the preceding 36 months. The sections would also be amended to require schools to use standards for assessing penalty points as found in the Texas Transportation Code.

Section 75.1005, Course Requirements, would be amended to require all public driver education programs to consist of a certain number of classroom hours; a certain number of in-car hours or simulator instruction taught in the presence of an instructor; and an additional 20 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of the Texas Transportation Code, §521.222(d)(2). Provisions would also be added to limit driver education training verified by the parent to one hour per day and require course content to include driving distractions and motorcycle awareness. In addition, the section would be amended to require that each stu-

dent be provided with a textbook or driver education instructional materials approved by the TEA.

Section 75.1006, Driver Licensing, would be updated to specify that behind-the-wheel instruction and in-car observation must be in the presence of a certified instructor. In addition, the section would be amended to include an additional 20 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of the Texas Transportation Code, §521.222(d)(2).

Technical edits would also be made throughout the subchapter.

The proposed amendments would add no reporting requirements. The proposed amendments would have no new locally maintained paperwork requirements.

Jerel Booker, associate commissioner for educator and student policy initiatives, has determined that for the first five-year period the amendments are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the proposed amendments relating to changes to course requirements.

The total estimated cost to the state is $10,000 in fiscal year 2011 and $200 each year of fiscal years 2012-2015. These estimated costs are related to personnel expenses.

The proposed rule actions may cause an increase in revenue for the state. The estimated increase is $325,000 in each year of fiscal years 2011-2012 and $250,000 in each year of fiscal years 2013-2015. Beginning March 1, 2010, each person aged 18 to 25 is required to successfully complete a six-hour Driver Education Course Exclusively for Adults and present a certificate (ADE-1317) to the Texas Department of Public Safety in order to apply for a driver's license. Since March 1, 2010, the TEA has sold over 70,000 certificates to licensed commercial driver education schools at $3.00 per certificate. It is estimated that the TEA will sell a minimum of 25,000 additional certificates by the end of fiscal year 2010. This will increase revenue by approximately $285,000. The number of certificate sales will likely increase in fiscal years 2011 and 2012 but is expected to decrease and level off after that. The TEA is unable to estimate an increase in revenue to school districts or open-enrollment charter schools because to date, no such applications have been approved.

The total estimated cost to each school district or open-enrollment charter school providing the courses is $10,000 in fiscal year 2011 and $200 in each year of fiscal years 2012-2015. All school districts and open-enrollment charter schools that teach driver education are required to modify and update their driver education curriculum. If a school chooses to teach the Driver Education Course Exclusively for Adults, the school is required to submit a driver education school license application and pay the $1,000 licensing fee. Additional costs include a course approval fee of $500 for a traditional course or $9,000 for an online course. The yearly renewal fee to maintain a driver education school license is $200. In addition, schools must pay for each certificate of course completion.

Mr. Booker has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be regulatory consistency to all driver education courses in Texas. The amendments that implement motorcycle safety, driving distractions, and an additional 20 hours of in-car instruction will provide a safer driving environment for Texas drivers.

The estimated cost to individuals required to comply with the proposed rules is $250 in each year of fiscal years 2011-2015. In addition to the 32 hours of classroom instruction, 7 hours of behind-the-wheel instruction, and 7 hours of observation with a licensed driver education instructor, parents are now required to provide their teenager with an additional 20 hours of behind-the-wheel instruction in order for them to apply for a driver's license. It is estimated that individuals will spend approximately $150 in gas and wear and tear on their personal vehicles.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins September 24, 2010, and ends October 25, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 24, 2010.

The amendments are proposed under the TEC, §7.021(b)(9) and §29.902, which authorize the agency to develop a program of instruction in driver education and traffic safety for public school students; §51.308, which states that a driver education course for the purpose of preparing students to obtain a driver's license may be offered by an institution of higher education, as defined by the TEC, §61.002, with the approval of the TEA; §1001.101, as amended by HB 339 and HB 2730, 81st Texas Legislature, 2009, which requires the commissioner by rule to establish or approve the curriculum and designate the textbooks to be used in a driver education course for minors and adults, including a driver education course conducted by a school district, driver education school, or parent or other individual under Texas Transportation Code, §521.205. Section 1001.101 requires that the driver education course include 7 hours of behind-the-wheel instruction and 7 hours of observation instruction in the presence of a person who holds a driver education instructor license or who meets the requirements of the Texas Transportation Code, §521.205, and an additional 20 hours of behind-the-wheel instruction, including at least 10 hours that takes place at night, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2); §1001.101, as amended by SB 1317, 81st Texas Legislature, 2009, which requires the commissioner by rule to establish the curriculum and designate the educational materials to be used in a driver education course for minors and adults and a driver education course exclusively for adults. Section 1001.101 specifies certain requirements for the driver education course exclusively for adults; §1001.1025, which requires the agency by rule to require that information relating to motorcycle awareness, the dangers of failing to yield the right-of-way to a motorcyclist, and the need to share the road with motorcyclists be included in the curriculum of any driver education course or driving safety course; §1001.110, which requires the commissioner by rule to require that information relating to the effect of using a wireless communication device or engaging

in other actions that may distract a driver on the safe or effective operation of a motor vehicle be included in the curriculum of each driver education course or driving safety course; and §1001.257, which states that the commissioner may not issue or renew a driver education instructor license, including a temporary license, to a person who has six or more points assigned to the person's driver's license under Texas Transportation Code, Chapter 708, Subchapter B.

The proposed amendments implement the TEC, §§7.021(b)(9); 29.902; 51.308; 1001.101, as amended by HB 339 and HB 2730, 81st Texas Legislature, 2009; 1001.101, as amended by SB 1317, 81st Texas Legislature, 2009; 1001.1025; 1001.110; and 1001.257.

§75.1001. Administration and Supervision.

(a) To be approved, a driver education course must be part of the course offerings of a public school, college, or university. An education service center (ESC) may manage and provide driver education programs for public schools if the course is part of the course offerings of the public school.

(b) The superintendent, ESC director, and college or university chief school official must:

(1) certify that the course meets Texas Education Agency (TEA) and Texas Department of Public Safety (DPS) standards for an approved course in driver education for Texas schools;

(2) certify that all driver education personnel and substitutes are properly certified to teach driver education, meet applicable state requirements, and the requirements of this subchapter;

(3) not falsify driver education records or allow driver education personnel and substitutes to falsify records;

(4) certify that all driver education teachers and teaching assistants annually (July 1 to June 30) complete a minimum of six hours of continuing education. Carryover credit of continuing education hours shall not be permitted. Instructors shall not receive credit for the same course each year. An instructor that teaches a continuing education course or instructor development course may receive credit for attending continuing education;

(5) document that each driver education instructor and teaching assistant providing instruction at the school, upon employment and once every other year thereafter, has not accumulated 6 [~~ten~~] or more penalty points on a driving record during [~~in~~] the preceding 36-month [~~past three-year~~] period [~~on a driving record evaluation~~]. The school must use the standards for assessing penalty points for convictions of traffic law violations and accident involvements [~~appearing on the instructor's current driving record~~] established under Texas Transportation Code, Chapter 708, Subchapter B [~~by the DPS that are the same as those used for Texas school bus drivers~~]. Instructors that accumulated 6 [~~ten~~] or more penalty points during the preceding 36-month [~~in a three-year~~] period cannot conduct training in a driver education program until it is documented that the accumulated penalty is less than 6 [~~ten~~] points;

(6) prohibit an instructor from giving instruction and prohibit a student from securing instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcohol Beverage Code and the Health and Safety Code;

(7) ensure that teachers and teaching assistants teach no more than eight hours of behind-the-wheel instruction per day;

(8) ensure that at least once each year that each driver education teaching assistant giving instruction is evaluated for quality by a supervising driver education teacher while providing actual instruction to students and that the evaluation is made part of the instructor's personnel file;

(9) provide each driver education instructor and administrator a copy of this subchapter; and

(10) conduct reviews on a periodic basis to assure that driver education programs and instructors are in compliance with all requirements specified for the programs and teachers and to ensure that training is being provided in a quality and ethical manner so as to promote respect for the purposes and objectives of driver training.

(c) The TEA and Texas Department of Public Safety may conduct on-site compliance surveys and complaint investigations.

§75.1002. Driver Education Teachers.

(a) To qualify to teach all phases of driver education to minors [~~teens~~] or adults and add a driver education endorsement as a specialization area on his or her current Texas teaching certificate, an individual must:

(1) possess a bachelor's [~~Bachelor's~~] degree;

(2) complete six semester hours of driver education classroom, in-car, simulation, and traffic safety instruction if the individual entered driver education teacher instructor development training before January 1, 1999, or for individuals entering driver education teacher instructor development training on or after January 1, 1999, complete nine semester hours of driver education classroom, in-car, simulation, and traffic safety instruction that include, as a minimum, learning activities that focus on preparing the prospective driver educator to conduct:

(A) driver education classroom knowledge courses with application to classroom organization; maintaining a learning environment; developing instructional modules for the classroom, observation, and simulator training; and facilitating learning experiences;

(B) learning activities that [~~which~~] develop vehicle operational skills for a novice driver with emphasis placed on laboratory organization and administration; maintaining a learning environment; developing laboratory instructional modules; and conducting learning experiences; and

(C) driving task analysis that includes an introduction to the task of the driver within the highway transportation system with emphasis on risk perception and management and the decision-making process;

(3) possess a valid Texas teaching certificate as defined by the State Board for Educator Certification;

(4) possess a valid Texas driver's license for the type of vehicle used for instruction; and

(5) not have accumulated 6 [~~ten~~] or more penalty points on a driving record during the preceding 36-month [~~in the past three-year~~] period. The school must use [~~on a driving record evaluation, using~~] the standards for assessing penalty points for convictions of traffic law violations and accident involvements [~~appearing on the instructor's current driving record~~] established under Texas Transportation Code, Chapter 708, Subchapter B [~~by the Texas Department of Public Safety (DPS) that are the same as those used for Texas school bus drivers~~]. Instructors that accumulated 6 [~~ten~~] or more penalty points during the preceding 36-month [~~in a three-year~~] period cannot be issued an endorsement until it is documented that the accumulated penalty is less than 6 [~~ten~~] points.

(b) A fully certified teacher of driver education may be designated by the superintendent, college or university chief school official, education service center (ESC) director, or their designee assigned to manage the driver education program as a supervising teacher. A school district, an ESC, or a college or university that uses teaching assistants must designate a minimum of one driver education supervising teacher to supervise, mentor, and evaluate teaching assistants.

(c) A student instructor may teach any practice teaching necessary for certification in the classroom phase of a driver education program under the direction and in the direct presence of a driver education teacher or supervising teacher or in accordance with the provisions of an approved alternative certification program. A student instructor may teach any practice teaching necessary for certification in the in-car phase of a driver education program under the direction and in the direct presence of a driver education teacher, supervising teacher or teaching assistant. The student instructor shall sign the student record for the training they instruct, and the driver education teacher, supervising teacher, or teaching assistant that observed the instruction shall co-sign.

(d) Driver education instructors and student instructors shall provide training in an ethical manner so as to promote respect for the purpose and objectives of a driver education program. A driver education instructor or student instructor shall not:

(1) make any sexual or obscene comments or gestures while performing the duties of an instructor or give instruction or allow a student to secure instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcohol Beverage Code and the Health and Safety Code;

(2) falsify driver education records; or

(3) have accumulated 6 [~~accumulate ten~~] or more penalty points on a driving record during the preceding 36-month [~~in the past three-year~~] period. The school must use [~~on a driving record, using~~] the standards for assessing penalty points for convictions of traffic law violations and accident involvements [~~appearing on the instructor's current driving record~~] established under Texas Transportation Code, Chapter 708, Subchapter B [~~by the DPS that are the same as those used for Texas school bus drivers~~]. Instructors that accumulated 6 [~~ten~~] or more penalty points during the preceding 36-month [~~in a three-year~~] period cannot provide instruction until it is documented that the accumulated penalty is less than 6 [~~ten~~] points.

(e) Driver education teachers and student instructors shall not teach more than eight hours of behind-the-wheel instruction per day.

§75.1003. Teaching Assistants.

(a) An individual may be employed as a teaching assistant in a driver education program under the direction of a supervising driver education teacher after completing one of the following programs.

(1) Teaching assistant (full). An individual may be approved as a teaching assistant (full) to conduct behind-the-wheel, observation, multicar range, and simulator training instruction to minors [~~teens~~] or adults; to assist certified teachers in the classroom phase of driver education provided the instructor is present and in the room; and to serve as a temporary substitute instructor in the classroom phase of driver education for no more than 25% of a driver education classroom program by successfully completing:

(A) a program of study in driver education approved by the Texas Education Agency (TEA). Applications are available from the TEA that must be submitted and approved by TEA before the training program begins;

(B) nine semester hours of driver and traffic safety education from an approved university that are required for driver education teacher endorsement; or

(C) nine semester hours of driver and traffic safety education instructor training as outlined in Texas Education Code, Chapter 1001.

(2) Teaching assistant (in-car only). An individual may be approved as a teaching assistant (in-car only) to conduct only behind-the-wheel and observation training instruction to minors [~~teens~~] or adults by completing one of the following requirements:

(A) six of the nine semester hours of driver and traffic safety education required for driver education teacher certification that include learning activities that focus on preparing the prospective driver educator to conduct vehicle operational skills for a novice driver with emphasis placed on laboratory organization and administration, maintaining a learning environment, developing laboratory instructional modules, conducting learning experiences, driving task analysis that includes an introduction to the task of the driver within the highway transportation system with emphasis on risk perception and management and the decision-making process; and driver education behind-the-wheel, observation, and traffic safety instructor development, and

(B) six semester hours of driver and traffic safety education instructor training as outlined in Texas Education Code, Chapter 1001.

(b) The TEA shall conduct criminal record evaluations and issue certificates of completed training for teaching assistants.

(c) To be approved, a teaching assistant in driver education must have a high school diploma or equivalent, have been a licensed driver, excluding the instruction permit, for at least 5 [~~five~~] years, possess a Texas driver's license valid for the type of vehicle used for instruction, and must not have accumulated 6 or more penalty points on a driving record during the preceding 36-month period. The school must use the standards for assessing penalty points for convictions of traffic law violations and accident involvements established under Texas Transportation Code, Chapter 708, Subchapter B [~~meet the driving record evaluation standards established by the Texas Department of Public Safety (DPS) for Texas school bus drivers~~].

(d) A teaching assistant may be trained by an approved university as described in subsection (a)(1)(B) of this section; or by a university, college, school district, or an education service center (ESC) as described in subsection (a)(1)(A) of this section. When the training is conducted by a college, school district, or an ESC, the program must be approved by TEA. A driver education school licensed under Texas Education Code, Chapter 1001, may train teaching assistants as described in subsection (a)(1)(C) or subsection (a)(2)(B) of this section.

(e) A school district, an ESC, or a college or university that uses teaching assistants must employ driver education supervising teachers to supervise, mentor, and evaluate the teaching assistants.

(f) A student instructor may teach any practice teaching necessary for certification in the in-car phase of a driver education program under the direction and in the direct presence of a driver education teacher, supervising teacher, or teaching assistant. The student teacher shall sign the student record for the training they instruct, and the driver education teacher, supervising teacher, or teaching assistant that observed the instruction shall co-sign.

(g) All teaching assistants (full or in-car only) and student instructors shall provide training in an ethical manner so as to promote

respect for the purpose and objectives of a driver education program. A teaching assistant or student instructor shall not:

(1) make any sexual or obscene comments or gestures while performing the duties of an instructor or give instruction or allow a student to secure instruction in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcohol Beverage Code and the Health and Safety Code;

(2) falsify driver education records; and

(3) have accumulated 6 [~~ten~~] or more penalty points on a driving record during the preceding 36-month [~~in the past three-year~~] period. The school must use [~~on a driving record, using~~] the standards for assessing penalty points for convictions of traffic law violations and accident involvements [~~appearing on the instructor's current driving record~~] established under Texas Transportation Code, Chapter 708, Subchapter B [~~by the Texas Department of Public Safety (DPS) that are the same as those used for Texas school bus drivers~~]. Instructors that accumulated 6 [~~ten~~] or more penalty points during the preceding 36-month [~~in a three-year~~] period cannot provide instruction until it is documented that the accumulated penalty is less than 6 [~~ten~~] points.

(h) All teaching assistants (full or in-car only) and student instructors shall not teach more than eight hours of behind-the-wheel instruction per day.

§75.1005. Course Requirements.

(a) To be approved under this subchapter, a driver education plan shall include one or more of the following course programs.

(1) Core program. This program shall consist of at least 32 hours of classroom instruction; 7 [~~, seven~~] hours of behind-the-wheel instruction in the presence of a certified instructor; 7 [~~, and seven~~] hours of in-car observation in the presence of a certified instructor; and 20 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). Under this plan, a student may receive only local credit for the course.

(2) In-car only program. This program shall consist of at least 7 [~~seven~~] hours of behind-the-wheel instruction in the presence of a certified instructor; 7 [~~and seven~~] hours of in-car observation in the presence of a certified instructor; and 20 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). Under this plan, a student may receive only local credit for the course.

(3) Classroom only program. This program shall consist of at least 32 hours of classroom instruction. Under this plan, a student may receive only local credit for the course.

(4) School day credit program. This program shall consist of at least one class period per scheduled day of school, for a semester (traditional, condensed, accelerated, block, etc.), covering the driver education classroom and in-car program of organized instruction or only the classroom program of organized instruction. This class traditionally consists of at least 56 hours of driver education classroom instruction and, if in-car instruction is provided, must include 7 [~~seven~~] hours of behind-the-wheel instruction in the presence of a certified instructor; 7 [~~and seven~~] hours of in-car observation in the presence of a certified instructor; and 20 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). Under this plan, a student may receive one-half unit of state credit toward graduation.

(5) Non-school day credit program. This program shall consist of at least 56 hours of driver education classroom instruction, and, if in-car instruction is provided, must include 7 [~~seven~~] hours of behind-the-wheel instruction in the presence of a certified instructor; 7 [~~and seven~~] hours of in-car observation in the presence of a certified instructor; and 20 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). Under this plan, a student may receive one-half unit of state credit toward graduation.

(6) Multi-phase school day or non-school day credit program. This program shall consist of at least 40 hours of driver education classroom instruction; 4 [~~, four~~] hours of behind-the-wheel instruction in the presence of a certified instructor; 8 [~~, eight~~] hours of in-car observation in the presence of a certified instructor; [~~, and~~] 12 hours of simulator instruction in the presence of a certified instructor; and 20 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). Under this plan, a student may receive one-half unit of state credit toward graduation.

(b) The minimum requirements of the driver education program must be met regardless of how the course is scheduled. The following applies to all minor and adult [~~teenage~~] driver education programs.

(1) Driver education programs may be scheduled in block or concurrent form.

(A) Block form is when the classroom phase is taught as a separate, complete unit before the in-car phase begins.

(B) Concurrent form is when the classroom and the in-car phases are taught simultaneously or on alternating days.

(2) Instruction may be scheduled any day of the week, during regular school hours, before or after school, and during the summer.

(3) Instruction shall not be scheduled before 5:00 a.m. or after 11:00 p.m. The superintendent, college or university chief school official, or education service center (ESC) director may approve exceptions to the scheduled hours of instruction and must include acceptance in writing of the exception by the parents or legal guardians for each of the students involved.

(4) The driver education classroom phase must have uniform beginning and ending dates. Students shall proceed in a uniform sequence. Students shall be enrolled and in class before the 7th [~~seventh~~] hour of classroom instruction in a 32-hour program and the 12th [~~twelfth~~] hour of classroom instruction in 56-hour or semester-length programs.

(5) Self-study assignments occurring during regularly scheduled class periods shall not exceed 25% of the course and shall be presented to the entire class simultaneously.

(6) The driver education course shall be completed within the timelines established by the superintendent, college or university chief school official, or ESC director. This shall not circumvent attendance or progress. Variances to the established timelines shall be determined by the superintendent, college or university chief school official, or ESC director and must be agreed to by the parent or legal guardian.

(7) Schools are allowed five minutes of break within each instructional hour in all phases of instruction. A break is an interruption in a course of instruction occurring after the lesson introduction and before the lesson summation. It is recommended that the five minutes of break be provided outside the time devoted to behind-the-wheel instruction so students receive a total of seven hours of instruction.

(8) A student shall not receive credit for more than four hours of driver education training at a school in one calendar day no matter what combination of training is provided, excluding makeup. Further, for each calendar day, a student shall be limited to a maximum of:

(A) two hours of classroom instruction;

(B) four hours of observation time;

(C) two hours of multicar range driving;

(D) three hours of simulation instruction; and

(E) one hour of behind-the-wheel instruction.

(9) Driver education training verified by the parent is limited to one hour per day.

(c) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the instructional objectives established by the commissioner of education, as specified in this subsection, and meet the requirements of this subchapter. Sample instructional modules may be obtained from the Texas Education Agency (TEA). Schools may use sample instructional modules developed by the TEA or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the modules outlined in this subsection and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the instructional objectives that must be provided to every student enrolled in a minor and adult driver education course include information relating to litter prevention; [,] anatomical gifts; distractions, including the use of a wireless communication device that includes texting; motorcycle awareness; [,] and alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle [~~that must be provided to every student enrolled in a teenage driver education course~~]. A student may apply to the Texas Department of Public Safety (DPS) for an instruction permit after completing six hours of instruction as specified in Module One if the student is taking the course in a concurrent program. The minor and adult [~~teenage~~] driver education program instructional objectives shall include:

(1) Module One: Traffic Laws. The student legally and responsibly performs reduced-risk driving practices in the Highway Transportation System (HTS) by:

(A) accepting driving as a privilege with responsibilities, obligations, and potential consequences; and

(B) applying knowledge and understanding of Texas traffic laws, including traffic control devices and right-of-way laws.

(2) Module Two: Driver Preparation. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

(A) employing pre-drive tasks;

(B) using and requiring passengers to use occupant protection and restraint systems;

(C) using vehicle symbols and devices;

(D) employing starting tasks;

(E) performing vehicle operation and control tasks;

(F) employing post-drive tasks;

(G) using baseline and progress assessment tools to evaluate and improve behind-the-wheel skill level; and

(H) formulating a driving plan.

(3) Module Three: Vehicle Movements. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

(A) sustaining visual attention and communication;

(B) using reference points;

(C) managing vehicle balance: and

(D) executing vehicle maneuvers.

(4) Module Four: Driver Readiness. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

(A) employing legal and responsible driving practices; and

(B) limiting and managing fatigue and aggressive driving.

(5) Module Five: Risk Management [~~Reduction~~]. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

(A) predicting, analyzing, and minimizing risk factors, including the dangers of failing to yield the right-of-way to a motorcyclist and the need to share the road with motorcycles; and

(B) employing a space management system.

(6) Module Six: Environmental Factors. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

(A) identifying and analyzing driving environments; and

(B) minimizing environmental risk.

(7) Module Seven: Distractions. The student legally and responsibly performs reduced-risk driving practices in the HTS by limiting and managing distractions, including the use of a wireless communication device that includes texting, and multi-task performances.

(8) Module Eight: Alcohol and Other Drugs. The student legally and responsibly performs reduced-risk driving practices in the HTS by adopting zero-tolerance practices related to the use of alcohol and other drugs by applying knowledge and understanding of alcohol and other drug laws, regulations, penalties, and consequences to licensing, driving, and lifestyles.

(9) Module Nine: Adverse Conditions. The student legally and responsibly performs reduced-risk driving practices in the HTS by managing adverse conditions resulting from weather, reduced-visibility, traction loss, and emergencies.

(10) Module Ten: Vehicle Requirements. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

(A) assessing and managing vehicle malfunctions;

(B) performing preventative maintenance; and

(C) planning trips.

(11) Module Eleven: Consumer Responsibilities. The student legally and responsibly performs reduced-risk driving practices in the HTS by attending to the vehicle requirements by making wise consumer decisions regarding vehicle use and ownership, vehicle insurance, environmental protection and litter prevention, and anatomical gifts.

(12) Module Twelve: Personal Responsibilities. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

(A) using the knowledge, skills, and experiences of the Driver Education and Traffic Safety Program;

(B) obtaining and using a driver license; and

(C) continuing the lifelong learning process of reduced-risk driving practices.

(d) A school may use multimedia systems, simulators, and multicar driving ranges for instruction in a driver education program.

(e) Each simulator, including the filmed instructional programs, and each plan for a multicar driving range must meet state specifications developed by the DPS and TEA. Simulators are electromechanical equipment that provides for teacher evaluation of perceptual, judgmental, and decision-making performance of individuals and groups. With simulation, group learning experiences permit students to operate vehicular controls in response to audiovisual depiction of traffic environments and driving emergencies. The specifications are available from TEA.

(f) A minimum of 4 [~~four~~] periods of at least 55 minutes per hour of instruction in a simulator may be substituted for 1 [~~one~~] hour of behind-the-wheel and 1 [~~one~~] hour observation instruction. A minimum of 2 [~~two~~] periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for 1 [~~one~~] hour of behind-the-wheel and 1 [~~one~~] hour observation instruction relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to behind-the-wheel instruction and a minimum of four hours must be devoted to observation instruction.

(g) A school may not permit more than 36 students per driver education class, excluding makeup [~~make-up~~] students.

(h) All behind-the-wheel lessons shall consist of actual driving instruction. Observation of the instructor, mechanical demonstrations, etc., shall not be counted for behind-the-wheel instruction. The instructor shall be in the vehicle with the student the entire time behind-the-wheel instruction is provided.

(i) Minor and adult [~~Teenage~~] driver education programs shall include the following components.

(1) Driver education instruction is limited to eligible students between the ages of 14-18 years of age, who are at least 14 years of age when the driver education classroom phase begins and who will be 15 years of age or older when the behind-the-wheel instruction begins. Students officially enrolled in school who are 18-21 years of age may attend a minor and adult [~~teenage~~] driver education program.

(2) Motion picture films, slides, videos, tape recordings, and other media that present concepts outlined in the instructional objectives may be used as part of the required instructional hours of the classroom instruction. Units scheduled to be instructed may also be conducted by guest speakers as part of the required hours of instruction. Together, these shall not exceed 640 minutes of the total classroom phase.

(3) Each classroom student shall be provided a driver education textbook or driver education instructional materials approved by the TEA [~~currently adopted by the State Board of Education~~].

(4) A copy of the current edition of the "Texas Driver Handbook" published by DPS[~~,~~] shall be furnished to each student enrolled in the classroom phase of the driver education course.

(5) No school should permit a ratio of less than two, or more than four, students per instructor for behind-the-wheel instruction, except behind-the-wheel instruction may be provided for only one student when it is not practical to instruct more than one student, for makeup [~~make-up~~] lessons, or if a hardship would result if scheduled instruction is not provided. In each case when only one student is instructed:

(A) the school shall obtain a waiver signed and dated by the parent or legal guardian of the student and the chief school official stating that the parent or legal guardian understands that the student may be provided behind-the-wheel instruction on a one-on-one basis with only the instructor and student present in the vehicle during instruction;

(B) the waiver may be provided for any number of lessons; however, the waiver shall specify the exact number of lessons for which the parent is providing the waiver; and

(C) the waiver shall be signed before the first lesson in which the parent is granting permission for the student to receive one-on-one instruction.

(j) Courses offered to adult persons who are 18 years of age or older shall only be offered by colleges and universities. Colleges and universities that offer driver education to adults shall submit and receive written approval for the course from the TEA prior to implementation of the program. The request for approval must include a syllabus, list of instructors, samples of instructional records that will be used with the course, and information necessary for approval of the program.

§75.1006. Driver Licensing.

(a) Students without a valid driver's license or instruction permit in his or her possession shall not receive behind-the-wheel instruction. The instructor must ensure that every student receiving behind-the-wheel instruction has a valid driver's license or instruction permit in his or her possession during all behind-the-wheel instruction.

(b) The student shall present a properly executed DE-964E to any Texas Department of Public Safety (DPS) driver's license office to apply for a driver's license or instruction permit.

(c) As soon as possible after a student receives an instruction permit or license from the DPS, the instructor must record the license number on the student's individual record.

(d) Under the block and concurrent programs a student may apply to the DPS for an instruction permit after completing all of the required classroom instruction or after completing six hours of classroom instruction devoted to the instructional objectives of classroom instruction designated by the commissioner of education found in Module One: [~~Texas Driver Responsibilities - Knowing Texas~~] Traffic Laws, as identified in §75.1005 of this title (relating to Course Requirements).

(e) A licensee shall not apply to DPS to have the restriction removed from the instruction permit until the licensee is 16 years of age or older and presents a DE-964E certificate showing that he or she completed an approved driver education program. In this case, the approved program must include, as a minimum, 32 hours of classroom instruction; 7 [~~, seven~~] hours of behind-the-wheel instruction in the presence of a certified instructor; 7 [~~, and seven~~] hours of in-car

observation in the presence of a certified instructor; and 20 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). [~~A licensee age of 18 or older is not required to complete a driver education program to apply.~~]

(f) The DPS may revoke the student's instruction permit when the student does not complete the classroom phase no matter which plan was followed or how the program was scheduled. The instructor or superintendent, college or university chief school official, or education service center director shall complete DPS Form DL-42 and provide it to the DPS division responsible for license and driver records within a period of time determined by the school, when the student does not complete the classroom.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005296
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 176. DRIVER TRAINING SCHOOLS

The Texas Education Agency (TEA) proposes amendments to §§176.1001, 176.1003, 176.1004, 176.1006-176.1008, 176.1010, 176.1012, 176.1013, 176.1015, 176.1016, 176.1018, 176.1101, 176.1103-176.1110, 176.1113, 176.1114, and 176.1117; the repeal of §176.1019; and new §176.1019 and §176.1020, concerning driver training schools. The sections establish minimum standards for operation of licensed Texas driver education schools and driving safety schools and course providers. The proposed rule actions would reflect changes resulting from the 81st Texas Legislature, 2009, and incorporate changes to reflect driver education industry standards.

House Bill (HB) 339 and HB 2730, 81st Texas Legislature, 2009, amended the Texas Education Code (TEC), §1001.101, to require a certain number of hours of behind-the-wheel and observation instruction and increase the total hours of behind-the-wheel driving instruction a minor receives by adding 20 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night.

Senate Bill (SB) 1317, 81st Texas Legislature, 2009, amended the TEC, §1001.101, to provide for a driver education course exclusively for adults, including requirements for certain instructional topics to be included in the course and allowance for the course to be offered online.

HB 339, 81st Texas Legislature, 2009, added the TEC, §1001.1015, to require the commissioner by rule to establish the curriculum and designate the educational materials to be used in a driver education course exclusively for adults. HB 339 also required certain instructional topics to be included in a driver education course exclusively for adults and allowed this course to be offered online.

SB 1967, 81st Texas Legislature, 2009, added the TEC, §1001.1025, to require motorcycle awareness to be included in the curriculum of any driver education course or driving safety course.

SB 1107 and HB 339, 81st Texas Legislature, 2009, added the TEC, §1001.110, to state that the commissioner by rule shall require information relating to driving distractions to be included in the curriculum of any driver education course or driving safety course.

HB 339 and HB 2730, 81st Texas Legislature, 2009, added the TEC, §1001.257, to allow the commissioner to deny an instructor license if a person has accumulated 6 or more penalty points on his or her driving record during the preceding 36-month period.

The proposed revisions to 19 TAC Chapter 176, Subchapters AA and BB, would update the rules to reflect statutory changes and current driver education industry standards. In addition, informal stakeholder discussions were held from July 2009-May 2010 with school districts and industry members. A draft of the proposed revisions was circulated to interested parties and comments solicited. Specifically, the following changes would be made.

Subchapter AA, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driver Education Schools

Section 176.1001, Definitions, would be amended to add definitions for the terms "ADE-1317," "alternative method of instruction," "clock hour," "course content validation question," "personal validation question," and "teacher of record." In addition, definitions would be clarified for the terms "break," "DE-964," and "good reputation."

Section 176.1003, Driver Education School Licensure, would be amended to clarify the requirement relating to submitting the appropriate fee prior to changing school locations and the refund requirement for a student not willing to transfer to a new school location. An additional circumstance under which the TEA may declare a school to be closed would also be added.

Section 176.1004, Driver Education School Responsibility for Employees, would be amended to clarify that a student instructor-trainee may teach under the direction of an instructor who is not required to possess a supervising teacher endorsement. The requirement would be less restrictive due to the decreased number of supervising teachers available in Texas. The section would also be amended to add reference to ADE-1317 certificates, which are to be issued upon completion of a driver education course exclusively for adults.

Section 176.1006, Driver Education Instructor License, would be amended to clarify language relating to instructor endorsements for supervising driver education teacher, driver education teacher, and teaching assistant-full and add new language relating to an endorsement for supervising teaching assistant-full. The section would also be amended to specify the circumstances for which a driver education instructor may or may not receive credit for continuing education requirements. In addition, the section would be amended to allow the commissioner to suspend, revoke, or deny a license to any driver education instructor who accumulates 6 or more penalty points on their personal driving record within the preceding 36 months.

Section 176.1007, Courses of Instruction, would be amended as follows.

A requirement would be added in subsection (b) that all driver education course content must be current with regard to data, laws, procedures, and methodology.

In subsection (b)(1), the term "teenage driver education" would be changed to "minor and adult driver education" to reflect changes to the TEC, §1001.101. The age requirements for persons who may enroll in a minor and adult driver education course would be changed from ages 14-18 to age 14 to under 25 years of age. A requirement would be added for the additional 20 hours of behind-the-wheel instruction provided by the parent, including prohibiting simulation hours from counting toward the additional 20 hours and limiting the instruction to 1 hour per day.

Subsection (b)(1) would also be amended to specify that all driver education course curricula must meet objectives outlined in the Program of Organized Instruction in Driver Education and Traffic Safety (POI), allow photographic slides to be used as instructional aides during driver education classroom instruction, and clarify that the allowable times for in-car instruction are specific to instruction provided by the school.

Subsection (b)(1) would be further amended to require a licensed driver education instructor to be present during use of multimedia systems, simulators, and multicar driving ranges; provide for certain time periods of simulation training to substitute for behind-the-wheel training and in-car observation requirements; allow a student to apply for an instructional permit with Department of Public Safety (DPS) after completing six hours of classroom instruction in Module One of the POI if he or she enrolls in a concurrent program; and indicate when an instructor can complete a DL-42 form and send it to DPS in order to cancel a student's instruction permit.

New subsection (b)(2) would be added to provide detailed criteria for traditional and online driver education courses exclusively for adults. Driver education school owners would submit the course to the TEA for review and approval. The proposed criteria for online courses would be consistent with the criteria already used for approval of online driving safety courses. Outdated adult driver education course guidelines would be deleted. In addition, requirements would be added that a person age 18 to under 25 must successfully complete either an entire minor and adult driver education course or an entire driver education course exclusively for adults in order to obtain a driver's license and that a person must be at least 18 years of age to be issued an ADE-1317 certificate.

New paragraphs (A)-(C) would be added to subsection (c)(1) to detail the requirements for course submission and approval of a six-semester-hour instructor development course, a nine-semester-hour instructor development course, and a supervising instructor development course.

Subsection (c)(2) would be amended to reduce the number of penalty points allowed on the personal driving records of students in a driver education instructor development course from 10 to 6 within the preceding 36 months. The subsection would also be amended to require schools to use standards for assessing penalty points as found in the Texas Transportation Code. A requirement that a supervising teaching assistant-full or a supervising driver education teacher must teach at least 25 percent of an instructor development course would be added. In addition, driver education schools would be required to submit dates, times, locations, and other pertinent information to the TEA at least ten days prior to teaching an instructor development course or a continuing education course.

Section 176.1008, Student Enrollment Contracts, would be amended to allow for the use of electronic signatures on enrollment contracts and include additional information required to be in an enrollment contract, including the school's termination policy, the amount of time a student has to complete classroom instruction, and the rates for classroom and in-car lessons that correspond to actual instructional costs. In addition, the proposed amendment would reference the ADE-1317 certificate, require that students be provided with a copy of the contract if they are age 18 or older, and provide for the use of a group contract for schools offering a driver education course exclusively for adults.

Section 176.1010, Attendance and Makeup, would be amended to allow for the use of electronic signatures on student records, clarify that the allowable times for driver education training are specific to instruction provided by the school, and limit the contractual timeline to complete a minor and adult driver education course to one year.

Section 176.1012, Cancellation and Refund Policy, would be amended to add the requirement that refunds must correspond with actual instructional hours not provided. In addition, the interest rate on unpaid refunds would be changed from 250 percent to 20 percent to better correspond with the current prime rate.

Section 176.1013, Facilities and Equipment, would be amended to clarify that an office or classroom facility of any driver education program may not be in a private residence.

Section 176.1015, Student Complaints, would be amended to delete the requirement that student records be maintained and available for review. The requirement would continue to be stated elsewhere in driver training rules.

Section 176.1016, Records, would be amended to specify that either written or electronic daily records of attendance may be used. Language relating to the individual student record form (classroom) would also be clarified.

Section 176.1018, Driver Education Certificates (DE-964), would be amended to include ADE-1317 certificates. The section title would also be amended to include ADE-1317 certificates. The requirement that school owners keep the TEA copies of DE-964 forms would be deleted. (The DE-964 was redesigned and no longer includes a TEA copy.)

New §176.1019, Alternative Method of Instruction for Driver Education Course, would be added to provide for alternative methods of instruction (AMI) for a driver education course. This section would allow the commissioner to approve the course content and delivery method of a driver education course. Driver education school owners would submit the course to the TEA for review and approval. The new section would provide detailed criteria acceptable for the driver education AMI. The proposed criteria would be consistent with the criteria already used for approval of driving safety courses offered by alternative delivery method (ADM).

For organizational purposes, current §176.1019 would be repealed and renumbered as proposed new §176.1020, Application Fees and Other Charges. Language in subsections (a), (b), (c), (d)(1)-(15), and (e) under proposed new §176.1020 reflects no changes from the current rule. Changes from the current rule would be the addition of fees for ADE-1317 certificates in paragraph (16) and application for approval of AMI courses in paragraphs (17) and (18) and traditional and online driver education courses exclusively for adults in paragraphs (19) and (20), re-

spectively. The fees would be consistent with those already in place for similar types of certificates and course approvals.

Technical edits would also be made throughout the subchapter.

Subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers

Section 176.1101, Definitions, would be amended to clarify the term "new course."

Section 176.1103, Driving Safety School Licensure, would be amended to clarify the effective date of school licensure and delete a circumstance under which the TEA may declare a school closed.

Section 176.1104, Course Provider Licensure, would be amended to clarify the effective date of course provider licensure and require course providers to submit a new continuing education course upon license renewal.

Section 176.1105, Driving Safety School and Course Provider Responsibilities, would be amended to increase the number of days allowed for a course provider to electronically submit certificate data to the TEA and require that uniform certificates of course completion contain TEA complaint contact information. In addition, a cross reference to a statute that no longer applies would be deleted.

Section 176.1106, Administrative Staff Members, would be amended to allow TEA compliance visits to be announced or unannounced.

Section 176.1107, Driving Safety Instructor License, would be amended to allow a specialized driving safety instructor, specialized driving safety instructor trainer, or an instructor development course specialized driving safety instructor trainer applicant to receive credit for past certification as a National Highway Traffic Safety Association Child Passenger Safety technician or instructor. The section would also be amended to require the driving safety instructor trainer, specialized driving safety instructor trainer, instructor development course driving safety instructor trainer, or instructor development course specialized driving safety instructor trainer for a newly approved course to demonstrate the ability to teach the instructor training course. Provisions prohibiting an instructor from making inappropriate advances and allowing the commissioner to suspend, revoke, or deny a license to any driving safety or specialized driving safety instructor trainer or instructor who uses inappropriate language or behavior would be added. In addition, an outdated statutory reference would be deleted.

Section 176.1108, Driving Safety Courses of Instruction, would be amended to allow ADMs an exception from the requirement that all course content be delivered under the direct observation of a licensed instructor and require course content to contain appropriate language. In addition, changes would be made to clarify submission of translator credentials or other requirements for translation of course content into languages other than English; require statistical data to be drawn from the Texas Department of Transportation or National Highway Traffic Safety Administration; specify that all driving safety course content must be current with regard to data, laws, procedures, and methodology; require courses to contain the top five contributing factors of motor vehicle crashes as identified by Texas Department of Transportation; and add course topics for motorcycle awareness and driving distractions. The requirement that a course author be a TEA-licensed instructor would be removed, clarification on the due date of course renewal would be added, and a requirement that methodology and procedures be updated for course renewal would be added. Language would be deleted that requires an instructor to evaluate a continuing education course, and a provision would be added to allow the TEA to approve a continuing education course presented by technology if it meets certain criteria. In addition, a cross-reference to subclauses within the section would be corrected.

Section 176.1109, Specialized Driving Safety Courses of Instruction, would be amended to require course content to contain appropriate language and clarify submission of translator credentials or other requirements for translation of course content into languages other than English. Changes would also be made to require statistical data to be drawn from the Texas Department of Transportation or National Highway Traffic Safety Administration, update course authorship requirements, delete language that requires an instructor to evaluate a continuing education course, and allow the TEA to approve a continuing education course presented by technology if it meets certain criteria. In addition, a cross-reference to subclauses within the section would be corrected.

Section 176.1110, Alternative Delivery Methods of Driving Safety Instruction, would be amended to add references to 19 TAC §176.1109 and update cross-references relating to mastery of course content. Requirements would be added to specify that student activity in an ADM must be documented and include the date and time and that an ADM presented over the Internet must display the school name, school license number, and course provider number on the homepage and registration page. A change would be made to require, rather than allow, a specified number of minutes for relevant videos. The amendment would also clarify the due date of ADM renewal.

Section 176.1113, Facilities and Equipment, would be amended to specify that the TEA would not approve any facility that contains an adult-oriented business or a facility that is required to exclude patrons because of age.

Section 176.1114, Student Complaints, would be amended to require that uniform certificates of course completion contain TEA complaint contact information.

Section 176.1117, Uniform Certificate of Course Completion for Driving Safety or Specialized Driving Safety Course, would be amended to delete the requirement that a course provider must retain voided certificates for three years and remove an unnecessary cross-reference.

Technical edits would also be made throughout the subchapter.

The proposed revisions would add no new reporting requirements for school districts. Driver training school owners already track the issuance of certificates, and the proposed revisions add no new reporting requirements. The procedural changes parallel those already found in the driver education rules and in driving safety rules for ADMs.

The proposed revisions would have no locally maintained paperwork requirements.

Jerel Booker, associate commissioner for educator and student policy initiatives, has determined that for the first five-year period the revisions are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the proposed revisions relating to changes to course requirements.

The total estimated cost to the state is $97,000 in fiscal year 2011, $120,000 in fiscal year 2012, $50,000 in fiscal year 2013, $31,000 in fiscal year 2014, and $29,000 in fiscal year 2015. These estimated costs include personnel costs of $75,000 for fiscal year 2011, $95,000 for fiscal year 2012, $25,000 for fiscal year 2013, and $9,000 in each year of fiscal years 2014 and 2015; travel costs of $7,000 in fiscal year 2011, $10,000 in each year of fiscal years 2012 and 2013, $7,000 in fiscal year 2014, and $5,000 in fiscal year 2015; and other operating expenses of $15,000 in each year of fiscal years 2011-2015. The personnel costs involved are for the review, approval, and auditing of curriculum updates to the Minor and Adult Driver Education Course, the Alternative Method of Delivery for the Minor and Adult Driver Education Course, and the new Driver Education Course Exclusively for Adults. The travel costs are for the auditing and monitoring of courses by compliance staff. The operating expenses include driver education certificate printing costs for the new course. The TEA anticipates an increase in applications for fiscal years 2011 and 2012 but a decrease after the first two years.

The proposed rule actions may cause an increase in revenue for the state. The estimated increase is $325,000 in each year of fiscal years 2011 and 2012 and $250,000 in each year of fiscal years 2013-2015. Beginning March 1, 2010, each person aged 18 to 25 is required to successfully complete a 6-hour Driver Education Course Exclusively for Adults and present a certificate (ADE-1317) to the Department of Public Safety in order to apply for a driver's license. Since March 1, 2010, the TEA has sold over 70,000 certificates to licensed commercial driver education schools at $3.00 per certificate. It is estimated that the TEA will sell a minimum of 25,000 additional certificates by the end of fiscal year 2010. This will increase revenue by approximately $285,000. The number of certificate sales will likely increase in fiscal years 2011 and 2012 but is expected to decrease and level off after that.

Mr. Booker has determined that for each year of the first five years the revisions are in effect the public benefit anticipated as a result of enforcing the revisions will be regulatory consistency to all driver education courses in the state. The rule actions that authorize the online driver education courses would also make these courses more readily available to the general public. Currently, driver education courses exclusively for adults are unavailable in many parts of the state. In addition, the rule actions that authorize motorcycle safety and driving distractions will provide a safer driving environment for Texas drivers.

The estimated cost to individuals required to comply with the proposed rule actions is $250 in each year of fiscal years 2011-2015. In addition to the 32 hours of classroom instruction, 7 hours of behind-the-wheel instruction, and 7 hours of observation with a licensed driver education instructor, parents are now required to provide their teenager with an additional 20 hours of behind-the-wheel instruction in order for them to apply for a driver's license. It is estimated that individuals will spend approximately $150 in gas and wear and tear on their personal vehicles. Adults between the ages of 18 and 25 are required to take a 6-hour Driver Education Course Exclusively for Adults in order to apply for a driver's license. The average cost of this course is $100.

The TEA has determined that there may be adverse economic impact for small businesses and microbusinesses as a result of the proposal. The estimated cost to small businesses and/or microbusinesses is $11,800 in fiscal year 2011 and $500 in each year of fiscal years 2012-2015. All licensed driver education schools are required to update their driver education curriculums, which will cost an estimated $1,500. If the school owners wish to offer the Driver Education Course Exclusively for Adults, they would have to pay either a $500 fee for a traditional course or a $9,000 fee for an online course. The schools would also have to purchase ADE-1317 certificates at $3.00 per certificate. Once the school has been licensed and the driver education course has been updated, reviewed, or approved, the only cost will be for certificates. The TEA estimates that between 1-100 small businesses and between 101-500 microbusinesses (businesses with fewer than 20 employees) would be impacted by expenses related to compliance, modifying processes, and hiring additional employees. Microbusinesses would be no more adversely impacted than small businesses.

The proposed rule actions may cause an increase in revenue to small businesses and microbusinesses depending on the number of customers a school receives. A school may provide instruction to students numbering between zero to more than 4,000 or 5,000 depending on how aggressively the school pursues customers. The TEA anticipates that an average of 120,000 to 130,000 students will take the new Driver Education Course Exclusively for Adults in order to apply for a driver's license.

No regulatory flexibility analysis will be conducted under the Texas Government Code, §2006.002. The proposed revisions are explicitly required by state mandate. There is no flexibility in implementing these new statutory requirements; therefore, no regulatory flexibility analysis can be performed.

The public comment period on the proposal begins September 24, 2010, and ends October 25, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 24, 2010.

SUBCHAPTER AA. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVER EDUCATION SCHOOLS

19 TAC §§176.1001, 176.1003, 176.1004, 176.1006 - 176.1008, 176.1010, 176.1012, 176.1013, 176.1015, 176.1016, 176.1018 - 176.1020

The amendments and new rules are proposed under the TEC, §1001.052, which requires the agency to adopt and administer comprehensive rules governing driving safety courses; §1001.053, which requires the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education. Section 1001.053 authorizes the commissioner to adopt rules to ensure the integrity of approved driving safety courses and to enhance program quality; §1001.101, as amended by HB 339 and HB 2730, 81st Texas Legislature, 2009, which authorizes the commissioner by rule to establish or approve the curriculum and designate the textbooks to be used in a driver education course for minors

and adults, including a driver education course conducted by a school district, driver education school, or parent or other individual under Texas Transportation Code, §521.205. Section 1001.101 requires that the driver education course include 7 hours of behind-the-wheel instruction and 7 hours of observation instruction in the presence of a person who holds a driver education instructor license or who meets the requirements of the Texas Transportation Code, §521.205, and an additional 20 hours of behind-the-wheel instruction, including at least 10 hours that takes place at night, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2); §1001.101, as amended by SB 1317, 81st Texas Legislature, 2009, which requires the commissioner by rule to establish the curriculum and designate the educational materials to be used in a driver education course for minors and adults and a driver education course exclusively for adults. Section 1001.101 specifies certain requirements for the driver education course exclusively for adults; §1001.1015, which requires the commissioner by rule to establish the curriculum and designate the educational materials to be used in a driver education course exclusively for adults; §1001.1025, which requires the agency by rule to require that information relating to motorcycle awareness, the dangers of failing to yield the right-of-way to a motorcyclist, and the need to share the road with motorcyclists be included in the curriculum of any driver education course or driving safety course; §1001.110, which requires the commissioner by rule to require that information relating to the effect of using a wireless communication device or engaging in other actions that may distract a driver on the safe or effective operation of a motor vehicle be included in the curriculum of each driver education course or driving safety course; and §1001.257, which states that the commissioner may not issue or renew a driver education instructor license, including a temporary license, to a person who has six or more points assigned to the person's driver's license under Texas Transportation Code, Chapter 708, Subchapter B.

The amendments and new rules implement the TEC, §§1001.052; 1001.053; 1001.101, as amended by HB 339 and HB 2730, 81st Texas Legislature, 2009; 1001.101, as amended by SB 1317, 81st Texas Legislature, 2009; 1001.1015; 1001.1025; 1001.110; and 1001.257.

§176.1001. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ADE-1317--The driver education certificate of completion used for certifying completion of a driver education course exclusively for adults. This term encompasses all parts of a certificate of completion with the same control number issued for an approved driver education course. It is a government record.

(2) [~~(1)~~] Advertising--Any affirmative act, whether written or oral, designed to call public attention to a school and/or course in order to evoke a desire to patronize that school and/or course.

(3) Alternative method of instruction--A method of instruction for the minor and adult driver education course that does not require students to be present in a classroom.

(4) [~~(2)~~] Branch school--A licensed driver education school that has the same ownership and name as a licensed primary driver education school.

(5) [~~(3)~~] Break--An interruption in a course of instruction occurring after the lesson introduction and no later than 30 minutes before the daily lesson ends [~~summation~~].

(6) [~~(4)~~] Change of ownership of a school--A change in the control of the school. Any agreement to transfer the control of a school is considered to be a change of ownership. The control of a school is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school.

(7) [~~(5)~~] Chief school official--The owner, director, assistant director, or assigned liaison of a licensed driver education school.

(8) Clock hour--55 minutes of instruction time in a 60-minute period for a driver education course. This includes classroom and in-car instruction time.

(9) [~~(6)~~] Contract site--An accredited public or private secondary school approved as a location for a driver education course of a licensed school.

(10) Course content validation question--A question designed to establish the student's participation in the course and comprehension of the course material by requiring the student to answer a question regarding a fact or concept taught in the course.

(11) [~~(7)~~] DE-964--The driver education certificate of completion used for certifying completion of an approved minor and adult driver education course. This term encompasses all parts of a certificate of completion with the same control number issued for an approved driver education course. It is a government record.

(12) [~~(8)~~] Deferred adjudication--An order by a court deferring action on a criminal matter pending the successful completion of terms imposed by that court.

(13) [~~(9)~~] Division--The division of the Texas Education Agency (TEA) responsible for administering the provisions of the law, rules, regulations, and standards as contained in this chapter and licensing Texas driver training programs.

(14) [~~(10)~~] Division director--The person designated by the commissioner of education to carry out the functions and regulations governing the driver education schools and designated as director of the division responsible for licensing driver training programs.

(15) [~~(11)~~] Educational objectives--The goal to promote respect for and encourage observance of traffic laws and traffic safety responsibilities of driver education and citizens; reduce traffic violations; reduce traffic-related injuries, deaths, and economic losses; and motivate development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

(16) [~~(12)~~] Good reputation--A person is considered to be of good reputation if:

(A) there are no felony convictions, unless the applicant can successfully demonstrate that the applicant has been rehabilitated;

(B) there are no convictions involving crimes of moral turpitude;

(C) within the last seven years, the person has never been successfully sued for fraud or deceptive trade practice;

(D) the person has not owned or operated a school with serious violations; and has never owned or operated a school or course provider that [~~which~~] closed with violations, including, but not limited to, unpaid refunds or selling, trading, or transferring a DE-964, ADE-1317, or uniform certificate of course completion to any person or school not authorized to possess it. In making a determination regarding serious violations, the division may consider the seriousness and number of violations, efforts made to correct the violations, and any history of similar violations;

(E) the person has not failed to provide material information to representatives of TEA or falsified instructional records or any documents required for approval or continued approval;

(F) in the case of an instructor, there are no misdemeanor or felony convictions involving driving while intoxicated over the past seven years; and

(G) in the event that an instructor or applicant has received deferred adjudication of guilt from a court of competent jurisdiction, a determination can be made upon satisfactory review of evidence that the conduct underlying the basis of the deferred adjudication has not rendered the person unworthy to provide driver training instruction. When determining underlying conduct, the commissioner may consider the facts and circumstances surrounding the deferred adjudication.

(17) [~~(13)~~] Moral turpitude--Conduct that is inherently immoral or dishonest.

(18) Personal validation question--A question designed to establish the identity of the student by requiring an answer related to the student's personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the student.

(19) [~~(14)~~] Primary school--A licensed driver education main school that may have branch schools.

(20) Teacher of record--A licensed supervising driver education teacher or licensed driver education teacher employed at the school who is directly responsible for the classroom instructional phase provided by a teaching assistant-full.

§176.1003. Driver Education School Licensure.

(a) Application. An application for a school license for a primary or branch driver education school shall be made on forms supplied by the Texas Education Agency (TEA).

(b) Bond requirements. In the case of an original or a change of owner application, an original bond or approved alternate form of security shall be provided. In the case of a renewal application, an original bond or approved alternate form of security or a continuation agreement for the approved bond currently on file or continuation of an approved alternate form of security shall be submitted. The bond or the continuation agreement shall be executed on the form provided by TEA. Approved alternate forms of security shall adhere to the following guidelines.

(1) An irrevocable letter of credit. The letter shall be in the name of the owner of the school. The letter shall specify the amount of credit extended, which shall be equivalent to the coverage required for a corporate surety bond, and the purpose of the credit. The letter shall contain the signature of an appropriate bank representative. The bank and the letter shall be approved by TEA.

(2) A cash deposit. An irrevocable account shall be established by the school owner in the name of TEA to be drawn upon as needed to pay student refunds as needed if the school closes owing refunds. The account shall be equivalent to the coverage required for a corporate surety bond. The bank and the terms of the account shall be approved by TEA. The TEA shall keep records of deposits and/or withdrawals on the account.

(c) Verification of ownership.

(1) In the case of an original or change of owner application for a primary school, the owner of the school shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division may require additional evidence to verify ownership.

(2) In the case of an original or change of owner application for a branch school, the owner shall submit an application on forms supplied by TEA.

(3) With the renewal application, the owner of the school shall provide verification that no change in ownership has occurred. The division may require additional evidence to verify that no change of ownership has occurred.

(d) Effective date of the driver education school license. The effective date of the school license for a primary driver education school shall be the date designated on the license. For a branch school, the expiration date of the driver education school license shall be concurrent with the driver education school license for the primary school.

(e) Purchase of a driver education school.

(1) A person, partnership, or corporation, purchasing a licensed driver education school shall obtain an original license.

(2) A driver education school license for a branch school is transferable only to an applicant who owns a currently licensed primary driver education school. A purchaser of a branch school who does not own a currently licensed primary driver education school shall obtain an original driver education school license for a primary school.

(3) Copies of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the school shall be submitted to TEA. The contract or any instrument transferring the ownership of the school shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the school shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(4) A change of ownership of a driver education school is considered substantially similar if:

(A) in the case of ownership by an individual, when the individual transfers ownership to a corporation in which the individual owns 100% of the stock of the corporation;

(B) in the case of ownership by a corporation, when the ownership is transferred to a partnership in which the stockholders possess equal interest in the owning partnership; or

(C) in the case of ownership by a partnership or a corporation that transfers ownership to a corporation in which the partners hold interest that equals the interest of the owning partnership, or the owning corporation transfers ownership to a different corporation in which the stockholders for both corporations possess equal shares.

(f) New location.

(1) The division shall be notified in writing of any change of address at least five working days before the move.

(2) The school must submit the appropriate change of address fee prior to the actual move.

(3) If a student is not willing to change locations or is prevented from completing the training at the new location, a pro-rata refund (without deducting any administrative expense) must be made to the student.

(4) The school must maintain a current mailing address, telephone number, and e-mail address (if applicable) at the division.

(g) Renewal of driver education school license. A complete application for the renewal of a license for a primary or branch driver education school shall be submitted before the expiration of the license and shall include the following:

(1) completed application for renewal;

(2) annual renewal fee[~~, if applicable~~];

(3) a current list of instructors employed at [~~by~~] the school;

(4) executed bond or executed continuation agreement for the bond currently approved by, and on file with, TEA or approved alternate form of security;

(5) a current list of all motor vehicles used for instruction;

(6) evidence that all vehicles used for instruction are properly insured; and

(7) any other revision or evidence of which the school has been notified in writing that is necessary to bring the school's application for a renewal license to a current and accurate status.

(h) Denial, revocation, or conditional license. The authority to operate a branch school ceases if a primary driver education school license is denied or revoked. The operation of a branch school license may be subject to any conditions placed on the continued operation of the primary driver education school. A driver education school license for a branch school may be denied, revoked, or conditioned separately from the license for the primary school.

(i) Notification of legal action. A school shall notify the division in writing of any legal action that may affect the operation of, or is filed against, the school, its officers, any owner, or any school instructor within five working days after the school, its officers, any owner, or any school instructor has commenced the legal action or has been served with legal process. Included with the written notification, the school shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(j) School closure.

(1) The school owner shall notify TEA at least five business days before the anticipated school closure. In addition, the school owner shall provide written notice of the actual discontinuance of the operation the day of cessation of classes. A school shall make all records available for review to TEA upon request.

(2) The division may declare a school to be closed:

(A) when the school does not have the facilities, vehicles, instructors, or equipment to provide training pursuant to this subchapter; [~~or~~]

(B) when the school has stopped conducting classes and has failed to fulfill contractual obligations to its students; or

(C) [~~(B)~~] when the school owner allows the school license to expire.

(3) If a branch school closes and a student is prevented from completing the training at the primary location, a pro-rata refund (without deducting any administrative expense) must be made to the student.

(k) Contract site. A school shall receive approval from TEA prior to conducting a class at a contract site, and approval may be granted by TEA upon review of the agreement made between the licensed driver education school and the contract site. The course shall be subject to the same rules that apply at the licensed driver education school, including periodic inspections by TEA representatives. An on-site inspection is not required prior to approval of the site [~~course~~].

§176.1004. Driver Education School Responsibility for Employees.

(a) All instruction in a driver education course shall be performed by Texas Education Agency (TEA)-licensed instructors in locations approved by TEA. However, a student instructor-trainee may teach any practice teaching necessary for the purpose of licensing in a TEA-approved location under the direction and in the presence of a licensed instructor [~~supervising teacher~~].

(b) Each driver education school shall:

(1) ensure that each individual permitted to give classroom instruction or in-car instruction at the school or classroom location has a valid current driver education instructor's license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(2) provide instruction or allow instruction to be provided only in courses that are currently on the school's list of approved courses;

(3) complete, issue, or validate a DE-964 or ADE-1317 only to a person who has successfully completed the entire portion of the course for which the DE-964 or ADE-1317 is being issued;

(4) authorize, approve, or conduct instruction in a motor vehicle that meets the requirements stated in §176.1014 of this title (relating to Motor Vehicles);

(5) not falsify driver education records; and

(6) ensure that no instructor provides more than eight hours of behind-the-wheel instruction per day.

(c) For the purposes of Texas Education Code, Chapter 1001, and this chapter, each person employed by or associated with any driver education school shall be deemed an agent of the driver education school, and the school may share the responsibility for all acts performed by the person which are within the scope of the employment and which occur during the course of the employment.

§176.1006. Driver Education Instructor License.

(a) Application for licensing as a driver education instructor shall be made on forms supplied by the Texas Education Agency (TEA). A person is qualified to apply for a driver education instructor license who:

(1) is of good reputation;

(2) has a high school diploma or equivalent; and

(3) holds a valid class A, B, C, or CDL driver's license, other than a learner's permit, for the preceding five years and which has not been suspended, revoked, or forfeited in the past five years.

(b) A person applying for an original driver education instructor license shall submit to TEA the following:

(1) complete application as provided by TEA;

(2) processing and annual instructor licensing fees; and

(3) documentation showing that all applicable educational requirements have been met. Original documentation shall be provided upon the request of the division.

(c) A person applying for a driver education instructor license may qualify for the following endorsements.

(1) Supervising driver education teacher.

(A) The application shall include:

(i) a current, valid Texas teacher's certificate with proof of successful completion of appropriate examinations issued by the State Board for Educator Certification (SBEC) to the applicant and an official transcript indicating successful completion of 15 semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the 15 semester hours of driver and traffic safety education if TEA determines that the course is equivalent; or

(ii) a current, valid Texas teacher's certificate with evidence of successful completion of appropriate examinations issued by SBEC to the applicant and evidence of successful completion of a TEA-approved instructor development course that is equivalent to 15 semester hours.

(B) Responsibilities of a supervising driver education teacher include:

(i) instruction and administration of the classroom and in-car phases of driver education to minors [~~teens~~] and adults as prescribed in the program of organized instruction for driver education approved by TEA and this chapter; and

(ii) instruction of a TEA-approved driver education instructor development course.

(C) A supervising driver education teacher may serve as a teacher of record.

(2) Driver education teacher.

(A) The application shall include:

(i) a current, valid Texas teacher's certificate with proof of successful completion of appropriate examinations issued by SBEC to the applicant and an official transcript indicating successful completion of nine semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the nine semester hours of driver and traffic safety education if TEA determines [~~can determine~~] that the course is equivalent; or

(ii) a current, valid Texas teacher's certificate with evidence of successful completion of appropriate examinations issued by SBEC to the applicant and evidence of successful completion of a TEA-approved instructor development course that is equivalent to nine semester hours.

(B) Responsibilities of a driver education teacher include instruction and administration of the classroom and in-car phases of driver education to minors [~~teens~~] and adults as prescribed in the program of organized instruction for driver education approved by TEA and this chapter.

(C) A driver education teacher may serve as a teacher of record.

(3) Teaching assistant.

(A) The application shall include:

(i) a valid teaching assistant certificate issued by the appropriate TEA division that indicates approval for in-car instruction only;

(ii) an official transcript indicating successful completion of six semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the six semester hours of driver and traffic safety education if TEA determines [~~can determine~~] that the course is equivalent; or

(iii) evidence of successful completion of a TEA-approved instructor development course that is equivalent to six semester hours.

(B) The duties of a teaching assistant are limited to in-car instruction.

(4) Teaching assistant-full [~~assistant (full)~~].

(A) The application shall include:

(i) a valid teaching assistant certificate issued by the appropriate TEA division that indicates approval for all phases of laboratory instruction and instructional assistance in the classroom; [~~or~~]

(ii) an official transcript indicating successful completion of nine semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the nine semester hours of driver and traffic safety education if TEA determines [~~can determine~~] that the course is equivalent; or

(iii) evidence of successful completion of a TEA-approved instructor development course that is equivalent to nine semester hours.

(B) A teaching assistant-full [~~assistant (full)~~] is authorized to teach all phases of in-car instruction and may assist certified teachers in the classroom phase of minor [~~teen~~] and adult driver education. All classroom instruction provided by a teaching assistant-full [~~assistant (full)~~] shall be endorsed by the teacher of record [~~a licensed driver education teacher or supervising teacher. The certified teacher shall be the teacher of record who will assume responsibility for the classroom instruction provided by the teaching assistant (full). The teacher of record shall sign all completed classroom instruction records~~]. In emergency situations, the school owner may request prior approval from the division to endorse classroom instruction records provided by a teaching assistant-full [~~assistant (full)~~].

(5) Supervising teaching assistant-full.

(A) The application shall include:

(i) a valid teaching assistant-full certificate issued by the appropriate TEA division that indicates approval for all phases of laboratory instruction and instructional assistance in the classroom and an official transcript indicating successful completion of 15 semester hours of driver and traffic safety education from an accredited college or university.

(ii) completion of course work in an approved alternative certification program may suffice for all or part of the 15 semester hours of driver and traffic safety education if TEA can determine that the course is equivalent; or

(iii) evidence of successful completion of a TEA-approved instructor development course that is equivalent to 15 semester hours.

(B) The responsibilities of a supervising teaching assistant-full include:

(i) authorization to teach all phases of in-car instruction;

(ii) assistance of certified teachers in the classroom phase of minor and adult driver education. All classroom instruction provided by a supervising teaching assistant-full shall be endorsed by the teacher of record; and

(iii) instruction in a TEA-approved driver education instructor development course.

(6) [~~(5)~~] Rehabilitative driver education in-car instructor.

(A) The application shall include:

(i) a valid driver education teaching assistant certificate issued by the appropriate TEA division or evidence of completion of an approved driver education program for certification as a teaching assistant that is equivalent to at least six semester hours; and

(ii) evidence of employment by, or a written contract with, the specific hospital or approved community rehabilitation program.

(B) The endorsement will be valid only during the time the instructor is employed by or under contract with the specified hospital or approved community rehabilitation program and will entitle the instructor to provide in-car driver education instruction only at the specified hospital or approved community rehabilitation program.

(d) An application for renewal of an instructor license shall be submitted on forms provided by TEA and shall be postmarked or hand-delivered at least 30 days before the date of expiration or a late instructor renewal fee shall be imposed. A complete application shall include the following:

(1) annual licensing fee; and

(2) evidence of completing continuing education during the individual license renewal period.

(e) Continuing education requirements include the following.

(1) Driver education instructors shall participate in and provide evidence of completion of at least one of the following to obtain credit for continuing education. Credit will be given only for courses that were completed during the appropriate licensing period.

(A) Instructors may participate in a TEA-approved driver education continuing education course provided by an approved driver education school. Evidence of completion of continuing education shall be provided for each instructor during the individual license renewal period on TEA forms or the equivalent. The instructor receiving instruction, and the facilitator, presenter, or the school owner providing the instruction shall sign the form.

(B) Credit may be given for successful completion of a postsecondary course that pertains to instruction techniques or instruction related to driver education as provided by an accredited college or university. Evidence of completion shall be a copy of official school documentation indicating a passing grade.

(C) Credit may be given for successful completion of an approved driver education instructor development course or TEA-approved alternative certification program for driver education. Evidence of completion shall be verifiable records of successful completion of the course.

(D) Credit may be given for successful completion of national, state, or regionally sponsored in-service workshops, seminars, or conferences. These programs must pertain to subject matters that relate to the practice of driver education or teaching techniques.

(E) Credit may be given for successful completion of an approved six-hour driving safety, specialized, or drug and alcohol driving awareness course once every three years if the licensee is not endorsed or has not been endorsed as an instructor in that program for a period of one year previous to class attendance.

(2) Carryover credit of continuing education hours shall not be permitted.

(3) A licensee may not receive credit for completing the same course more than once every three years.

(4) A licensed driver education instructor who teaches an approved driver education continuing education [~~or instructor development~~] course may receive credit for attending continuing education.

(5) A licensed driver education instructor will [~~may~~] not receive credit for driver education continuing education by completing or teaching a driving safety continuing education course approved for driving safety only or by completing a driver education course exclusively for adults.

(f) An instructor who has allowed a previous license to expire shall file an original application on a form provided by TEA and shall include the processing and annual instructor licensing fees and evidence of continuing education completed within the last year. Evidence of driver and traffic safety education training may not be required to be resubmitted if the documentation is on file at TEA.

(g) All driver education instructor license endorsement changes shall require the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes; and

(2) the annual licensing fee.

(h) All other license change requests, including duplicate instructor licenses or name changes, shall be made in writing and shall include payment of the duplicate instructor license fee.

(i) The TEA shall be notified of an instructor's change of address in writing. Address changes shall not require payment of a fee.

(j) All instructors shall notify the division and school owner in writing of any criminal complaint filed against the instructor within five working days of commencement of the criminal proceedings. The division may require a file-marked copy of the petition or complaint that has been filed with the court.

(k) An instructor shall not make any sexual or obscene comments or gestures while performing the duties of an instructor.

(l) An instructor shall not falsify driver education records.

(m) The commissioner of education may suspend, revoke, or deny a license to any driver education instructor under any of the following circumstances.

(1) The applicant or licensee has been convicted of any felony, or an offense involving moral turpitude, or an offense of involuntary or intoxication manslaughter, or criminally negligent homicide

committed as a result of the person's operation of a motor vehicle, or an offense involving driving while intoxicated or driving under the influence of drugs, or an offense involving tampering with a governmental record.

(A) These particular crimes relate to the licensing of instructors because such persons, as licensees of TEA, are required to be of good moral character and to deal honestly with the state and members of the public. Driver education instruction involves supervision of inexperienced drivers on public highways and accurate record keeping and reporting for driver licensing, court documentation, and other purposes. In determining the present fitness of a person who has been convicted of a crime and whether a criminal conviction directly relates to an occupation, TEA shall consider those factors stated in Texas Occupations Code, Chapter 53.

(B) In the event that an instructor is convicted of such an offense, the instructor's license will be subject to revocation or denial. A conviction for an offense other than a felony shall not be considered by TEA under this paragraph if a period of more than ten years has elapsed since the date of the conviction or of the release of the person from the confinement, conditional release, or suspension imposed for that conviction, whichever is the later date. For seven years after an instructor is convicted of an offense involving driving while intoxicated, the instructor's license shall be recommended for revocation or denial.

(C) For the purposes of this paragraph, a person is convicted of an offense when a court of competent jurisdiction enters an adjudication of guilt on an offense against the person, whether or not:

(i) the sentence is subsequently probated and the person is discharged from probation; or

(ii) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(2) The applicant, licensee, any instructor, or agent is addicted to the use of alcoholic beverages or drugs or becomes incompetent to safely operate a motor vehicle or conduct classroom or in-car instruction properly.

(3) The license was improperly or erroneously issued.

(4) The applicant or licensee fails to comply with the rules and regulations of TEA regarding the instruction of drivers in this state or fails to comply with any section of Texas Education Code, Chapter 1001.

(5) The instructor fails to follow procedures as prescribed in this chapter.

(6) The applicant or licensee has a personal driving record showing that the person has accumulated 6 [~~ten~~] or more penalty points during the preceding 36-month [~~in the past three-year~~] period as identified in the driver responsibility program. [~~The standards for assessing penalty points for convictions of traffic law violations and accident involvements appearing on the instructor's current driving record are established by the Texas Department of Public Safety and are the same as those used for Texas school bus drivers.~~]

§176.1007. Courses of Instruction.

(a) The educational objectives of driver training courses shall include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

(b) This subsection [~~section~~] contains requirements for driver education courses. All course content and instructional material shall include current statistical data, references to law, driving procedures, and traffic safety methodology. For each course, curriculum documents and materials may be requested as part of the application for approval.

(1) Minor and adult [~~Teenage~~] driver education course.

(A) The driver education classroom phase for students age 14 to under 25 years of age [~~between the ages of 14-18~~] shall consist of: [~~a minimum of 32 hours of classroom instruction. The in-car phase must consist of 7 hours of behind-the-wheel instruction and 7 hours of in-car observation. Schools are allowed five minutes of break per instructional hour for all phases. No more than ten minutes of break time may be accumulated for each two hours of instruction.~~]

(i) a minimum of 32 hours of classroom instruction. The in-car phase must consist of seven hours of behind-the-wheel instruction and seven hours of in-car observation in the presence of a person who holds a driver education instructor license; and

(ii) 20 hours of behind-the-wheel instruction, including at least 10 hours of nighttime instruction, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). The 20 hours of instruction must be endorsed by a parent or legal guardian if the student is a minor. Simulation hours shall not be substituted for these 20 hours of instruction. Driver education training endorsed by the parent is limited to one hour per day.

(B) Schools are allowed five minutes of break per instructional hour for all phases. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(C) [~~(B)~~] Driver education course curriculum content, minimum instruction requirements, and administrative guidelines for classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the educational objectives established by the commissioner of education in the Program of Organized Instruction in Driver Education and Traffic Safety (POI) and meet the requirements of this subchapter. [~~Schools may use sample instructional modules developed by the Texas Education Agency (TEA) or develop their own instructional modules based on the approved Program of Instruction for Driver Education and Traffic Safety. The educational objectives are organized into all topics and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques.~~] In addition, the educational objectives that must be provided to every student enrolled in a minor and adult driver education course shall include information relating to litter prevention, anatomical gifts, leaving children in vehicles unattended, distractions, motorcycle awareness, and alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle [~~that must be provided to every student enrolled in a teenage driver education course~~].

(D) [~~(C)~~] Driver education schools that desire to instruct students age 14 to under 25 years of age [~~ages 14-18~~] shall provide the same beginning and ending dates for each student in the same class of 36 or less. No student shall be allowed to enroll and start the classroom phase after the sixth hour of classroom instruction has been completed.

(E) [~~(D)~~] Students shall proceed in the sequence identified by and [~~in the Program of Instruction for Driver Education and Traffic Safety~~] approved for that school.

(F) [~~(E)~~] Students shall receive classroom instruction from an instructor who is approved and licensed by TEA. An instructor shall be in the classroom and available to students during the entire 32

hours of instruction, including self-study assignments. Instructors shall not have other teaching assignments or administrative duties during the 32 hours of classroom instruction.

(G) [~~(F)~~] Motion picture films, photographic slides, videos, tape recordings, guest speakers, and other instructional media that present concepts required in the POI [~~Program of Instruction for Driver Education and Traffic Safety~~] may be used as part of the required 32 hours of classroom instruction. These instructional aids shall not exceed 640 minutes of the total 32 hours.

(H) [~~(G)~~] Self-study assignments occurring during regularly scheduled class periods shall not exceed 25% of the course and shall be presented to the entire class simultaneously.

(I) [~~(H)~~] Each classroom student shall be provided a driver education textbook designated by the commissioner [~~of education~~] or access to instructional materials that are in compliance with the POI [~~Program of Instruction for Driver Education and Traffic Safety~~] approved for the school. Instructional materials, including textbooks, must be in a condition that is legible and free of obscenities.

(J) [~~(I)~~] A copy of the current edition of the "Texas Driver Handbook" or instructional materials that are equivalent shall be furnished to each student enrolled in the classroom phase of the driver education course.

(K) [~~(J)~~] Each student, including makeup [~~make-up~~] students, shall be provided their own seat and table or desk while receiving classroom instruction. A school shall not enroll more than 36 students, excluding makeup [~~make-up~~] students, and the number of students may not exceed the number of seats and tables or desks available at the school.

(L) [~~(K)~~] When a student changes schools, the school must follow the current transfer policy developed by TEA and Texas Department of Public Safety (DPS).

(M) [~~(L)~~] All classroom phases of driver education, including makeup [~~make-up~~] work, shall be completed within the timelines stated in the original student contract. This shall not circumvent the attendance and progress requirements.

(N) [~~(M)~~] All in-car lessons shall consist of actual driving instruction. No school shall permit a ratio of more than four students per instructor or exceed the seating and occupant restraint capacity of the vehicle used for instruction. Schools that allow one-on-one instruction shall notify the parents in the contract.

(O) [~~(N)~~] A student must have a valid driver's license or instruction permit in his or her possession during any behind-the-wheel instruction.

(P) [~~(O)~~] All in-car instruction provided by the school shall begin no earlier than 5:00 a.m. and end no later than 11:00 p.m. The division may approve exceptions; however, the request shall be made in writing by the school owner or school director and include acknowledgment by all parents in the form of signatures.

(Q) [~~(P)~~] A school may use multimedia systems, simulators, and multicar driving ranges for in-car instruction in a driver education program. Each simulator, including the filmed instructional programs, and each plan for a multicar driving range must meet state specification developed by DPS and TEA. A licensed driver education instructor must be present during use of multimedia systems, simulators, and multicar driving ranges.

(R) [~~(Q)~~] Four [~~A minimum of four~~] periods of at least 55 minutes per hour of instruction in a simulator may be substituted for 1 [~~one~~] hour of behind-the-wheel [~~in-car~~] instruction and 1 hour of in-car observation. Two [~~A minimum of two~~] periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for 1 [~~one~~] hour of behind-the-wheel [~~in-car~~] instruction and 1 hour of in-car observation relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to actual behind-the-wheel instruction. [~~Seven hours of in-car observation is required regardless of combinations used.~~]

(S) [~~(R)~~] A driver education program may be scheduled with the classroom phase of instruction presented in block form prior to the in-car phase or concurrently with the in-car phase. Under the block and concurrent programs [~~program~~], a student may apply to the DPS for an instruction permit after completing all of the required classroom instruction or [~~. Under the concurrent program, the student may apply to the DPS for an instruction permit~~] after completing six hours of classroom instruction devoted to the instructional objectives of classroom instruction designated by the commissioner [~~of education~~] found in Module One: Traffic Laws [~~the Program of Instruction for Driver Education and Traffic Safety~~].

(T) [~~(S)~~] [~~When a student receives an instruction permit from DPS under the concurrent schedule provision, the instructor must record the license number.~~] A student issued a DE-964 [~~licensed~~] under the block and concurrent programs [~~program~~] must subsequently complete the required classroom instruction. If a student does not subsequently complete the required class instruction, the instructor must complete DPS Form DL-42 and send it to the DPS division responsible for license and driver records. Form DL-42 should be prepared as soon as it is evident the student will not complete the required hours of instruction. The DPS may then revoke the student's instruction permit. [~~Form DL-42 should not be prepared and submitted to DPS when the student successfully completes the classroom phase of instruction.~~]

(U) [~~(T)~~] Driver education instruction is limited to eligible students who are at least 14 years of age when the driver education classroom phase begins and who will be 15 years of age or older when the behind-the-wheel and multicar range instruction begins.

(V) [~~(U)~~] Each school owner that teaches driver education courses shall collect adequate student data to enable TEA to evaluate the overall effectiveness of the driver education course in reducing the number of violations and accidents of persons who successfully complete the course. The commissioner [~~of education~~] may determine a level of effectiveness that serves the purposes of Texas Education Code (TEC), Chapter 1001.

(2) Driver education course exclusively for adults. Courses offered in a traditional classroom setting or online to persons who are age 18 to under 25 years of age for the education and examination requirements for the issuance of a driver's license under Texas Transportation Code, §521.222(c) and §521.1601, must be offered in accordance with the following guidelines.

(A) Traditional approval process. The commissioner may approve a driver education course exclusively for adults to be offered traditionally if the course meets the following requirements.

(i) Application. The driver education school shall submit a completed application along with the appropriate fee.

(ii) Request for approval. The request for approval must include a syllabus, list of instructional materials, contract, and instructional records.

(iii) School license required. A person or entity offering a driver education course exclusively for adults must hold a driver education school license.

(iv) Instructor license required. Students shall receive classroom instruction from a licensed supervising teacher, driver education teacher, or teaching assistant-full.

(v) Minimum course content. The driver education course exclusively for adults shall consist of six clock hours of classroom instruction that meets the following topics.

(I) Course introduction--ten minutes. Objective: The student recognizes the value of legal and responsible reduced-risk driving practices and accepts driving as a privilege with responsibilities, obligations, and potential consequences.

(II) Your license to drive--minimum of 20 minutes. Objective: The student reduces risk and accepts driving as a privilege by legally and responsibly possessing a driver's license, registering and having a current inspection on a motor vehicle, and obeying the Safety Responsibility Act.

(III) Right-of-way--minimum of 50 minutes. Objective: The student reduces risk by legally and responsibly accepting or yielding the right-of-way.

(IV) Traffic control devices--minimum of 40 minutes. Objective: The student reduces risk by legally and responsibly applying knowledge and understanding of traffic control devices.

(V) Controlling traffic flow--minimum of 40 minutes. Objectives: The student reduces risk by legally and responsibly applying knowledge and understanding of laws and procedures for controlling traffic flow.

(VI) Alcohol and other drugs--minimum of 50 minutes. Objective: The student legally and responsibly performs reduced-risk driving practices by adopting zero-tolerance driving and lifestyle practices related to the use of alcohol and other drugs and applying knowledge and understanding of alcohol and other drug laws, regulations, penalties, and consequences.

(VII) Cooperating with other roadway users--minimum of 20 minutes. Objective: The student reduces risk by legally and responsibly cooperating with law enforcement and other roadway users, including vulnerable roadway users in emergency and potential emergency situations.

(VIII) Managing risk--minimum of 50 minutes. Objective: The student reduces and manages risk by legally and responsibly understanding the issues commonly associated with motor vehicle collisions, including poor decision making, risk taking, impaired driving, distractions, speed, failure to use a safety belt, driving at night, and using a wireless communications device while operating a vehicle.

(IX) Classroom progress assessment--25 minutes (this shall be the last unit of instruction). The remaining 25 minutes of instruction shall be allocated to the topics included in the minimum course content under subclauses (II)-(VIII) of this clause.

(vi) Course management. An approved adult driver education course shall be presented in compliance with the following guidelines.

(I) Students shall receive classroom instruction from a licensed supervising teacher, driver education teacher, or teaching assistant-full. The instructor shall be physically present in appropriate proximity to the student for the type of instruction being given. The teacher of record shall sign all completed classroom instruction records provided by a teaching assistant-full.

(II) A copy of the current edition of the "Texas Driver Handbook" or study material that is equivalent shall be furnished to each student enrolled in the course.

(III) Self-study assignments, motion picture films, photographic slides, videos, tape recordings, guest speakers, and other instructional media that present topics required in the course shall not exceed 120 minutes of instruction.

(IV) Each student, including makeup students, shall be provided their own seat and table or desk while receiving classroom instruction. A school shall not enroll more than 36 students, excluding makeup students, and the number of students may not exceed the number of seats and tables or desks available at the school.

(V) All classroom instruction, including makeup work, shall be completed within the timelines stated in the original student contract.

(VI) A minimum of 330 minutes of instruction is required.

(VII) The total length of the course shall consist of a minimum of 360 minutes.

(VIII) Thirty minutes of time, exclusive of the 330 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content.

(IX) Students shall not receive a driver education certificate of completion unless that student receives a grade of at least 70% on the highway signs examination and at least 70% on the traffic laws examination as required under Texas Transportation Code, §521.161.

(X) The driver education school shall make a material effort to establish the identity of the student.

(B) Online approval process. The commissioner may approve a driver education course exclusively for adults to be offered online if the course meets the following requirements.

(i) Application. The driver education school shall submit a completed application along with the appropriate fee.

(ii) Request for approval. The request for approval must include a syllabus cross-reference, contract, and instructional records.

(iii) School license required. A person or entity offering an online driver education course exclusively for adults must hold a driver education school license.

(I) The driver education school shall be responsible for the operation of the online course.

(II) Students shall receive classroom instruction from a licensed supervising teacher, driver education teacher, or teaching assistant-full.

(iv) Course content. The online course must meet the requirements of the course identified in the TEC, §1001.101(a)(2).

(I) Course topics. The course requirements described in subparagraph (A)(v) of this paragraph shall be met.

(II) Length of course. The course must be 6 hours in length, which is equal to 360 minutes. A minimum of 330 minutes of instruction must be provided. Thirty minutes of time, exclusive of the 330 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(III) Required material. A copy of the current edition of the "Texas Driver Handbook" or study material that is equivalent shall be furnished to each student enrolled in the course.

(IV) Editing. The material presented in the online course shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(V) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the course.

(VI) Minimum content. The online course shall present sufficient content so that it would take a student 360 minutes to complete the course. In order to demonstrate that the online course contains sufficient minutes of instruction, the online course shall use the following methods.

(-a-) Word count. For written material that is read by the student, the course shall contain the total number of words in the written sections of the course. This word count shall be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(-b-) Multimedia presentations. For multimedia presentation, the online course shall calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 120 minutes.

(-c-) Charts and graphs. The online course may assign one minute for each chart or graph.

(-d-) Time allotment for questions. The online course may allocate up to 60 seconds for questions presented over the Internet and 30 seconds for questions presented by telephone.

(-e-) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 330 minutes, the online course has demonstrated the required amount of minimum content.

(-f-) Alternate time calculation method. In lieu of the time calculation method, the online course may submit alternate methodology to demonstrate that the online course meets the 330-minute requirement.

(v) Personal validation. The online course shall maintain a method to validate the identity of the person taking the course. The personal validation system shall incorporate one of the following requirements.

(I) School-initiated method. Upon approval by the TEA, the online course may use a method that includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting. The method must meet the following criteria.

(-a-) Time to respond. The student must correctly answer a personal validation question within 60 seconds.

(-b-) Placement of questions. At least two personal validation questions shall appear randomly during each instructional hour, not including the final examination.

(-c-) Exclusion from the course. The online course shall exclude the student from the course after the student has incorrectly answered more than 30% of the personal validation questions.

(-d-) Correction of answer. The online course may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(II) Third party data method. The online course shall ask a minimum of 12 personal validation questions randomly throughout the course from a bank of at least 20 questions drawn from a third party data source. The method must meet the following criteria.

(-a-) Time to respond. The student must correctly answer a personal validation question within 60 seconds.

(-b-) Placement of questions. At least two personal validation questions shall appear randomly during each instructional hour, not including the final examination.

(-c-) Exclusion from the course. The online course shall exclude the student from the course after the student has incorrectly answered more than 30% of the personal validation questions.

(-d-) Correction of answer. The online course may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(vi) Content validation. The online course shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(I) Timers. The online course shall include built-in timers to ensure that 330 minutes of instruction have been attended and completed by the student.

(II) Testing the student's participation in multimedia presentations. The online course shall ask at least 1 course validation question following each multimedia clip of more than 60 seconds.

(-a-) Test bank. For each multimedia presentation that exceeds 60 seconds, the online course shall have a test bank of at least 4 questions.

(-b-) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(-c-) Failure criteria. If the student fails to answer the question correctly, the online course must require the student to view the multimedia clip again. The online course shall then present a different question from its test bank for that multimedia clip. The online course may not repeat a question until it has asked all the questions from its test bank.

(-d-) Answer identification. The online course shall not identify the correct answer to the multimedia question.

(III) Course participation questions. The online course shall test the student's course participation by asking at least two questions from each of the seven topics listed in subparagraph (A)(v)(II)-(VIII) of this paragraph.

(-a-) Test bank. The test bank for course participation questions shall include at least ten questions from each of the seven topics identified in subparagraph (A)(v)(II)-(VIII) of this paragraph.

(-b-) Placement of questions. The course participation questions shall be asked at the end of the major unit or section in which the topic is covered.

(-c-) Question difficulty. Course participation questions shall be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(IV) Comprehension of course content. The online course shall test the student's mastery of the course content by administering at least 30 questions covering the highway signs and traffic laws required under Texas Transportation Code, §521.161.

(-a-) Test banks (two). Separate test banks for course content mastery questions are required for the highway signs and traffic laws examination as required under Texas Transportation Code, §521.161, with examination questions drawn equally from each.

(-b-) Placement of questions. The mastery of course content questions shall be asked at the end of the course (comprehensive final examination).

(-c-) Question difficulty. Course content mastery questions shall be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(vii) Retest the student. If the student misses more than 30% of the questions asked on an examination, the online course shall retest the student using different questions from its test bank. The student is not required to repeat the course, but may be allowed to review the course prior to retaking the examination. If the student fails the comprehensive final examination three times, the student shall fail the course.

(viii) Student records. The online course shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. The school shall also ensure that the student record is readily, securely, and reliably available for inspection by a TEA representative. The student records shall contain the following information:

(I) the student's first, middle, and last name;

(II) the student's date of birth and gender;

(III) a record of all questions asked and the student's responses;

(IV) the name or identity number of the staff member entering comments, retesting, or revalidating the student;

(V) both answers and a reasonable explanation for the change if any answer to a question is changed by the school for a student who inadvertently missed a question; and

(VI) a record of the time the student spent in each unit and the total instructional time the student spent in the course.

(ix) Waiver of certain education and examination requirements. A licensed driver education instructor must determine that the student has successfully completed and passed a driver education course exclusively for adults prior to waiving the examination requirements of the highway sign and traffic law parts of the examination required under Texas Transportation Code, §521.161, and signing the ADE-1317 driver education completion certificate.

(x) Age requirement. A person must be at least 18 years of age to enroll in a driver education course exclusively for adults.

(xi) Issuance of certificate. Not later than the 15th working day after the course completion date, the school shall issue an ADE-1317 driver education certificate only to a person who successfully completes an approved online driver education course exclusively for adults.

(xii) Access to instructor. The school must establish hours that the student may access the instructor. With the exception of circumstances beyond the control of the school, the student shall have access to the instructor during the specified hours.

(xiii) Additional requirements for online courses.

(I) Re-entry into the course. An online course may allow the student re-entry into the course by username and password authentication or other means that are as secure as username and password authentication.

(II) Navigation. The student shall be provided orientation training to ensure easy and logical navigation through the course. The student shall be allowed to freely browse previously completed material.

(III) Audio-visual standards. The video and audio shall be clear and, when applicable, the video and audio shall be synchronized.

(IV) Domain names. Each school offering an online course must offer that online course from a single domain. The online course may accept students that are redirected to the online course domain, as long as the school license number appears on the source that redirects the student to the online course domain. The student must be redirected to a webpage that clearly identifies the licensed school offering the online course before the student begins the registration process, supplies any information, or pays for the course.

[~~(2) Adult driver education. Courses offered to persons who are over 18 years old must be offered in accordance with the following guidelines.~~]

[~~(A) Driver education schools that offer a classroom driver education program for the purpose of preparing an adult to pass the written examination required to obtain a learner's permit or driver's license shall submit and receive approval of the course from TEA. The request for approval must include a syllabus, contract, and instructional records that will be used with the course.~~]

[~~(B) An adult driver education course may be approved as required under Transportation Code, §521.222(c), if the course meets the minimum standards outlined in this paragraph.~~]

[~~(i)~~ ~~Minimum course content. For students desiring to obtain an instruction permit under a concurrent program, the adult driver education course shall consist of a minimum six clock hours of classroom instruction that meets or exceeds the minimum requirements for the first six hours of a teenage driver education outlined in the Program of Instruction for Driver Education and Traffic Safety approved by TEA.~~]

[~~(ii)~~ ~~Course management. An approved adult driver education course shall be presented in compliance with the following guidelines.~~]

[~~(I)~~ ~~Students shall receive classroom instruction from a licensed supervising teacher, driver education teacher, or teaching assistant (full). The instructor shall be physically present in appropriate proximity to the student for the type of instruction being given.~~]

[~~(II)~~ ~~A copy of the current edition of the "Texas Driver Handbook" or study material that is equivalent shall be furnished to each student enrolled in the course.~~]

(3) Compliance with Texas Transportation Code, §521.1601. Persons age 18 to under 25 years of age must successfully complete either a minor and adult driver education course or the driver education course exclusively for adults. Partial completion of either course does not satisfy the requirements of rule or law.

(4) Issuance of certificate. A licensed school or instructor may not issue an ADE-1317 adult driver education certificate to a person who is not at least 18 years of age.

(c) This subsection [~~section~~] contains requirements for driver education instructor development courses. For each course, the follow-

ing curriculum documents and materials are required to be submitted as part of the application for approval. If the course meets the minimum requirements set forth in this subchapter, the division may grant an approval. Schools desiring to provide driver education instructor development courses shall provide an application for approval that shall be in compliance with this section.

(1) Schools desiring to obtain approval for a driver education instructor development course shall request an application for approval from TEA. All instructor development curricula submitted for approval shall meet or exceed the requirements set forth for approved programs offered at colleges, universities, school districts, or educational service centers and shall be specific to the area of specialization. Guidelines and criteria for the course shall be provided with the application packet, and the school shall meet or exceed the criteria outlined.

(A) Six-semester-hour instructor development course. The driver education instructor development program instructional objectives must be equivalent to 6 semester hours or 90 clock hours of driver and traffic safety education instructor training and shall include:

(i) Driver Education I--minimum of 45 clock hours. Instructional objectives: the trainee shall acquire the knowledge, skills, and understanding to instruct students in the reduced-risk driving practices in the Highway Transportation System (HTS) in accordance with the standards for minor and adult driver education and traffic safety. Instruction shall address the following topics:

(I) overview of Driver Education I;

(II) minor and adult driver education curriculum overview and course goals;

(III) school and instructor liability and responsibility;

(IV) student evaluation and assessment;

(V) instructor conduct, including professionalism and public relations;

(VI) rules, codes, and standards for driver education programs; and

(VII) classroom progress examination for Driver Education I.

(ii) Driver Education II--minimum of 45 clock hours. Instructional objectives: the trainee shall acquire the knowledge, skills, and understanding to instruct students in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety for in-car instruction. Instruction shall address the following topics:

(I) overview of Driver Education II;

(II) minor and adult driver education in-car curriculum overview;

(III) commentary driving techniques;

(IV) factors that influence learning and habit formation;

(V) in-car lesson planning, including scheduling and designing;

(VI) vocabulary and communication;

(VII) risk management;

(VIII) general guidelines for conducting behind-the-wheel and in-car observation;

(IX) in-car debriefing techniques;

(X) proper record keeping and maintenance;

(XI) classroom progress examination for Driver Education II; and

(XII) in-car laboratory, including:

(-a-) initial assessment of trainee's driving skills by instructor trainer;

(-b-) observation of in-car teaching techniques as given by a licensed instructor;

(-c-) practice of instructor risk-management and emergency procedures, including taking control of the vehicle under the supervision and observation of a licensed instructor;

(-d-) in-car trainee student teaching under the supervision and observation of a licensed instructor; and

(-e-) trainee in-car student teaching final progress assessment under the supervision and observation of a licensed instructor.

(B) Nine-semester-hour instructor development course. The driver education instructor development program instructional objectives must be equivalent to 9 semester hours or 135 clock hours of driver and traffic safety education instructor training and shall include:

(i) all requirements set forth in subparagraph (A) of this paragraph; and

(ii) Driver Education III--minimum of 45 clock hours. Instructional objectives: the trainee shall acquire the knowledge, skills, and understanding to instruct students in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety for classroom instruction. Instruction shall address the following topics:

(I) overview of Driver Education III;

(II) classroom delivery, including TEC, rules, standards, and school administrative procedures;

(III) student learning styles;

(IV) classroom management and student discipline;

(V) classroom lesson planning and designing;

(VI) scheduling driver education programs;

(VII) proper record keeping and maintenance;

(VIII) simulation theory and multicar range instruction;

(IX) instructor professional growth;

(X) classroom progress examination for Driver Education III; and

(XI) classroom laboratory, including:

(-a-) observation of classroom teaching techniques as given by a licensed instructor; and

(-b-) classroom practice student teaching under the supervision and observation of a licensed instructor.

(C) Supervising instructor development course. The supervising driver education instructor development program instructional objectives must be equivalent to 6 semester hours or 90 clock hours of driver and traffic safety education instructor training and shall include:

(i) training in administering driver education programs and supervising and administering traffic safety education;

(ii) Supervising Instructor I--minimum of 45 clock hours. Instructional objectives: the instructor shall acquire the knowledge, skills, and understanding to instruct trainees in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety. Instruction shall address the following topics:

(I) overview of Supervising Instructor I;

(II) minor and adult driver education curriculum overview and course goals;

(III) rules, codes, and standards for driver education programs;

(IV) learning styles;

(V) factors that influence learning and habit formation;

(VI) vocabulary and communication;

(VII) lesson plan development;

(VIII) classroom management and student discipline; and

(IX) classroom progress examination for Supervising Instructor I; and

(iii) Supervising Instructor II--minimum of 45 clock hours. Instructional objectives: the instructor shall acquire the knowledge, skills, and understanding to instruct trainees in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety. Instruction shall address the following topics:

(I) overview of Supervising Instructor II;

(II) student evaluation and assessment;

(III) commentary driving techniques;

(IV) in-car debriefing techniques;

(V) scheduling driver education programs;

(VI) proper record keeping and maintenance;

(VII) school and instructor liability and responsibility;

(VIII) instructor conduct, including professionalism and public relations;

(IX) risk management;

(X) simulation theory and multicar range;

(XI) professional growth;

(XII) classroom progress examination for Supervising Instructor II; and

(XIII) classroom laboratory, including:

(-a-) observation of nine-semester-hour driver education instructor development course classroom teaching techniques as given by a licensed instructor; and

(-b-) classroom practice student teaching of a nine-semester-hour driver education instructor development course under the supervision and observation of a licensed instructor.

(2) Prior to enrolling a student in a driver education instructor development course, the school owner or representative must obtain proof that the student has a high school diploma or equivalent. A copy of the evidence must be placed on file with the school. Further, the school shall obtain and evaluate a current official driving record from the student prior to enrollment. The individual must not have accumulated 6 [~~ten~~] or more penalty points on a driving record during the preceding 36-month period [~~in the past three-year period on a driving record evaluation~~]. The school must use the standards for assessing penalty points for convictions of traffic law violations and accident involvements [~~appearing on the instructor's current driving record~~] established under Texas Transportation Code, Chapter 708, Subchapter B [~~by the DPS that are the same as those used for Texas school bus drivers~~].

(3) Instruction records shall be maintained by the school and supervising teacher for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include[~~:~~] the trainee's name, address, driver's license number, and other pertinent data; name and instructor license number of the person conducting the training; and dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the supervising teacher conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the school.

(4) All student instruction records submitted for the approved instructor development courses shall be original documents.

(5) A properly licensed supervising driver education teacher or supervising teaching assistant-full shall teach a minimum of 25% of 6-semester-hour, 9-semester-hour, and supervising instructor development courses [~~the course~~]. The supervising teacher may allow a driver education teacher, teaching assistant-full, or teaching assistant [~~teachers and teaching assistants~~] to provide training under the direction of the supervising teacher in areas appropriate for their level of certification and/or licensure. The supervising teacher is responsible for certifying all instruction conducted by the driver education teacher, teaching assistant-full, or teaching assistant, including [~~must be in appropriate proximity during all instruction except~~] independent study and research assignments, which shall not exceed 25% of the total training program time.

(6) Schools desiring to teach driver education instructor development courses shall either submit course offerings as a part of the school application or, if offered periodically, submit the dates, times, locations, and scheduled instructors' names and license numbers at least ten days before teaching the course.

(d) This subsection [~~section~~] contains requirements for driver education continuing education courses.

(1) Driver education school owners may receive an approval for a four-hour continuing education course and provide the approved course to instructors to ensure that instructors meet the requirements for continuing education.

(2) The request for course approval shall contain the following:

(A) a description of the plan by which the course will be presented;

(B) the subject of each unit;

(C) the educational objectives of each unit;

(D) time to be dedicated to each unit;

(E) instructional resources for each unit, including names or titles of presenters and facilitators; and

(F) a plan by which the school owner will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course.

(3) A continuing education course may be approved if TEA determines that:

(A) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of a licensed driver education instructor;

(B) the course pertains to subject matters that relate directly to the practice of driver education instruction, instruction techniques, or driver education-related subjects; and

(C) the entire course shall be taught by individuals with recognized experience or expertise in the area of driver education or related subjects. The division may request evidence of the individuals' experience or expertise.

(4) Driver education school owners may not offer the same continuing education course to instructors each year. In order to continue to offer a course, a new or revised continuing education course shall be submitted to TEA for approval.

(5) Driver education school owners must notify the division [~~The division must be notified~~] of the scheduled dates, times, and locations of all continuing education courses at least ten days prior to teaching the course [~~first day of class~~].

(e) A branch school may offer only a course that is approved for the primary school.

(f) Schools applying for approval of additional courses after the original approval has been granted shall submit the documents designated by the division with the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(g) If an approved course is discontinued, the division shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the school's approval.

(h) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner [~~of education~~] determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(i) The commissioner [~~of education~~] may revoke approval of a school's courses under certain circumstances, including, but not limited to, the following.

(1) Information contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the instructors, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school offers a course which has not been approved or for which there are no instructors or equipment.

(4) The school has been found to be in violation of TEC [~~Texas Education Code~~], Chapter 1001, and/or this chapter.

§176.1008. Student Enrollment Contracts.

(a) A legal written or electronic [~~legal~~] student enrollment contract shall be executed prior to the school's receipt of any money. Electronic signatures shall comply with Texas Business and Commerce Code, Chapter 322.

(b) All driver education student enrollment contracts shall contain at least the following:

(1) the student's legal name [~~and driver's license number~~];

(2) the student's driver's license number (if applicable);

(3) [~~(2)~~] the student's address, including city, state, and zip code;

(4) [~~(3)~~] the student's telephone number;

(5) [~~(4)~~] the student's date of birth;

(6) [~~(5)~~] the full legal name and license number of the primary school or the branch school;

(7) [~~(6)~~] the specific course to be taught;

(8) [~~(7)~~] the agreed total contract charges that itemize all tuition, fees, and other charges;

(9) [~~(8)~~] the terms of payment;

(10) [~~(9)~~] the number of classroom lessons;

(11) [~~(10)~~] the length of each lesson and [~~or~~] course;

(12) [~~(11)~~] the school's cancellation, termination, and refund policy;

(13) [~~(12)~~] a statement indicating the specific location, date, and time that classroom instruction is scheduled to begin; the date classroom instruction is scheduled to end; and the amount of time a student has to complete all classroom instruction, makeup [~~make-up~~] assignments, and in-car instruction;

(14) [~~(13)~~] the number of in-car lessons;

(15) [~~(14)~~] the rate per classroom lesson that corresponds to actual instructional costs [~~or course for classroom instruction~~];

(16) [~~(15)~~] the rate per in-car lesson that corresponds to actual instructional costs. If no charge or if the charge is included in the concurrent cost, the parent must initial his or her understanding that a refund may not be forthcoming if the student withdraws from the course before the in-car instruction is completed [~~or course for in-car instruction~~];

(17) [~~(16)~~] the rates for use of a school car for a road test (if an extra charge is made);

(18) [~~(17)~~] a statement that the school maintains a business insurance policy for vehicles with coverage as required by Texas Transportation Code, Chapter 601, and uninsured or underinsured coverage;

(19) [~~(18)~~] the signature of a school representative; and

(20) [~~(19)~~] the student's signature or, if the driver education student is younger than 18, the signature of the parent or guardian. The signature of the parent or guardian is not required for an individual younger than 18 who is, or has been, married or whose disabilities of

minority have been removed generally by law. Instead, such an individual shall:

(A) present a marriage certificate or a divorce decree (but not an annulment decree) or other satisfactory evidence of marriage or of having been married; or

(B) present a court order showing removal of disabilities of minority; or

(C) present a notarized parental authorization.

(c) In addition, all driver education student enrollment contracts shall contain statements substantially as follows.

(1) I have been furnished a copy of the school tuition schedule; cancellation and refund policy; and school regulations pertaining to absence, grading policy, progress, and rules of operation and conduct.

(2) The school is prohibited from issuing a DE-964 or ADE-1317 if the student has not met all of the requirements for course completion, and the student should not accept a DE-964 or ADE-1317 under such circumstances.

(3) This agreement constitutes the entire contract between the school and the student, and assurances or promises not contained herein shall not bind the school or the student.

(4) I further realize that any grievances not resolved by the school may be forwarded to Driver Training, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The current telephone number of the division shall also be provided.

(d) A copy of the enrollment contract shall be delivered to: [~~the parent or guardian that signed the contract.~~]

(1) the student, if 18 years of age or older; or

(2) the parent or guardian that signed the contract.

(e) A copy of each enrollment contract shall be a part of the student files maintained by all driver education schools.

(f) Schools shall submit proposed or amended enrollment contracts to the division.

(g) Student enrollment contracts used at branch schools must be those approved for use at the primary school.

(h) Driver education courses exclusively for adults may use a group contract that includes more than one student's name.

§176.1010. Attendance and Makeup.

(a) Written or electronic records of student attendance shall be prepared daily to document the attendance and absence of the students. A student must make up any time missed. Electronic signatures shall comply with Texas Business and Commerce Code, Chapter 322.

(b) Schools are allowed five minutes of break per instructional hour.

(c) Driver education training provided by the school is limited to five hours per day. Classroom instruction shall not exceed two hours per day, excluding makeup [~~make-up~~] work. In-car instruction provided by the school shall not exceed three hours per day as follows:

(1) three hours or less of in-car training; however, behind-the-wheel instruction is limited to one hour per day, except as provided in subsection (d) of this section; or

(2) three hours or less of simulation instruction; or

(3) three hours or less of multicar range instruction; or

(4) any combination of the methods delineated in this subsection that does not exceed three hours per day.

(d) A 2-hour [~~two-hour~~] increment of behind-the-wheel instruction may be offered once during the behind-the-wheel instruction for each student and shall include 10 [~~ten~~] minutes of instructional break after 55 minutes of instruction as identified in §176.1007(b)(1)(A) of this title (relating to Courses of Instruction).

(e) The attendance policy shall limit a student's absences to no more than 10 [~~ten~~] classroom hours of a 32-classroom-hour session. A student whose classroom enrollment is terminated for violating the attendance policy may not reenter before the start of the next new class.

(f) The student may receive credit for previous training if the student reenters and completes the applicable portion of the course within the timeline specified in the original student enrollment contract, starting from the first scheduled day of class on the original contract.

(g) Schools shall submit a makeup [~~make-up~~] policy to the division for approval. All absences are subject to the attendance policy regardless of whether the student attends makeup [~~make-up~~] lessons. Students may be allowed to complete up to ten hours of classroom makeup [~~make-up~~] work assignments outside of regularly scheduled classroom instruction. Schools shall not initiate nor encourage absences. Makeup [~~Make-up~~] policies shall adhere to the following requirements:

(1) For a policy that allows a student to attend a missed lesson on the same date or at a later date at a regularly scheduled class, the class shall be engaged in the same lesson the student missed previously.

(2) For a policy that allows a student to perform an individual makeup [~~make-up~~] lesson, a sample of each makeup [~~make-up~~] lesson, clearly labeled as " makeup [~~make-up~~] for the driver education course," shall be available for review by the Texas Education Agency at the school. Each lesson shall be clearly identified as a makeup [~~make-up~~] lesson and identified as to the units of instruction to be covered. Evidence of makeup [~~make-up~~] completed outside of regularly scheduled classroom instruction shall be placed in the student file.

(h) A school may allow a student to attend an alternative class on the same calendar day if the sequence of instruction will be maintained by the identical lesson being offered. The student instruction record shall reflect the time of day the alternative class was attended. A student selecting alternative scheduling shall not be considered absent.

(i) Except as provided in subsection (j) of this section, the enrollment of students who do not complete all required instructional hours within the timelines specified in the original student enrollment contract will be terminated. Contractual timelines shall not exceed one year.

(j) Variances to the timelines for completion of the driver education instruction stated in the original student enrollment contract may be made at the discretion of the school owner and must be agreed to in writing by the parent or guardian.

§176.1012. Cancellation and Refund Policy.

(a) School cancellation and refund policies shall be in accordance with Texas Education Code (TEC), Chapter 1001.

(b) If a student withdraws or is terminated from the course, a refund must be issued that corresponds to the actual instructional hours not provided.

(c) [~~(b)~~] Refunds for all driver education schools shall be completed within 30 days after the effective date of termination except as

allowed under §176.1010(d) of this title (relating to Attendance and Makeup). Proof of completion of refund shall be the refund document or copies of both sides of the canceled check and shall be on file within 75 days of the effective date of termination. All refund checks shall identify the student to whom the refund is assigned. In those cases where multiple refunds are made using one check, the check shall identify each individual student and the amount to be credited to that student's account.

(d) [~~(c)~~] In reference to TEC, §1001.404, the interest rate on unpaid refunds is set at 20% [~~250%~~].

(e) [~~(d)~~] In reference to TEC, §1001.404, a school is considered to have made a good faith effort to consummate a refund if the student file contains evidence of the following attempts:

(1) certified mail to the student's last known address;

(2) certified mail to the student's permanent address; and

(3) certified mail to the address of the student's parent, if different from the permanent address.

(f) [~~(e)~~] If it is determined that the method used by the school to calculate refunds is in error or the school does not routinely pay refunds within the time required by TEC, §1001.402(b)(5), the school shall submit a report of an audit which includes any interest due as set forth in TEC, §1001.404, conducted by an independent certified public accountant or public accountant who is properly registered with the appropriate state board of accountancy, of the refunds due former students. The audit opinion letter shall be accompanied by a schedule of student refunds due which shall disclose the following information for the previous two years from the date of request by the Texas Education Agency (TEA) for each student:

(1) name, address, and driver's license number;

(2) last date of attendance or date of termination; and

(3) amount of refund with principal and interest separately stated, date and check number of payment if payment has been made, and any balance due.

(g) [~~(f)~~] Any funds received from, or on behalf of, a student shall be recorded in a format that is readily accessible to representatives of TEA and acceptable to the division.

(h) [~~(g)~~] Branch schools shall use the policies approved for use at the primary school.

§176.1013. Facilities and Equipment.

(a) Each school shall conduct the Texas Education Agency-approved driver education course in a facility or facilities approved by the division.

(b) A school offering any phase of [~~teen~~] driver education shall maintain an office in a place other than a private residence; and no classroom facility for [~~teen or adult~~] driver education programs shall be located in a private residence.

(c) The amount of classroom space shall meet the use requirements of the maximum number of current students in class with appropriate seating and writing facilities as necessitated by the activity patterns of the course.

(d) Enrollment shall correspond to the design characteristics of the student workstations. The facilities shall meet any state and local ordinances governing housing and safety for the use designated.

§176.1015. Student Complaints.

The primary school shall have a written grievance procedure that is disclosed to all students. Branch schools shall follow the procedures approved for the primary school. The function of the procedure shall be to attempt to resolve disputes between students, including terminations and graduates, and the school. [~~Student records shall be maintained and available for review.~~]

§176.1016. Records.

(a) A driver education school shall accurately complete all school records and applications and furnish upon request any data pertaining to student enrollments and attendance, as well as records and necessary data required for licensure and to show compliance with the legal requirements for inspection by authorized representatives of the Texas Education Agency (TEA). The records shall include timecards for instructors and schedules that reflect the duties and instruction times for instructors that correlate to the times that are shown on timecards. There may be announced or unannounced on-site visits at each school each year.

(b) The schools shall retain all student records for at least three years. A school shall maintain the records of the students who completed driver education classes at the site of instruction for the most current 12 months. The school owner shall maintain all other driver education records at a location accessible by the school owner after 12 months. All records pertaining to each completed student must be kept at one location. Schools with no current enrollment may request approval from the division to transfer records to the primary school or another approved location.

(c) The school shall maintain a written or electronic daily record of attendance for all students enrolled at the instruction site. The record shall include the information specified in this subsection.

(1) Attendance records shall include legend entries. Each entry made on the legend must be made by using symbols, abbreviations, or other appropriate markings to indicate the following:

(A) absent;

(B) makeup;

(C) present;

(D) date; and

(E) time.

(2) The individual student record form (classroom) for all students, including completed, terminated, or withdrawn, shall include the following:

(A) name and classroom address of the school;

(B) full name, full address, telephone number of the student, and date of birth;

(C) date instruction terminated, if applicable;

(D) type and driver's license or permit number, if applicable, held by the student, including the expiration date and licensing state;

(E) month, day, year, and start and end time of instruction;

(F) each unit of instruction;

(G) grade earned for each unit;

(H) instruction hours for [~~teen and adult~~] classroom, simulators, behind-the-wheel, and observation;

(I) initials of each instructor providing the classroom or in-car lesson. The instructor's signature and license number shall appear at least once on the form. The teacher of record shall sign all completed [~~teen~~] classroom instruction records;

(J) beginning and ending dates of the classroom phase; and

(K) statement of assurance signed by student and instructor that the record is true and correct.

(3) The individual student record form (in-car instruction) shall contain the following entries:

(A) month, day, year, and start and end time of instruction;

(B) each lesson of instruction;

(C) score earned for each lesson;

(D) name of student; and

(E) instructor's name and license number or instructor initials (if instructor's name and license number appears at least one time on the record).

(4) Each driver education school shall retain a copy of the DE-964 or ADE-1317 in the appropriate student files.

(d) Each driver education school shall, upon request, furnish each individually contracted student a duplicate of his or her instruction record when all of the courses contracted for are completed or the student otherwise ceases taking instruction at or with the school, providing all financial obligations have been met by the student.

(e) Driver education schools shall not release student records that identify the student by name or address, or may lead to such identification, except:

(1) to authorized representatives of the TEA;

(2) to a peace officer;

(3) under court order or subpoena; or

(4) with written consent of both the student and at least one parent or legal guardian, if the student is under 18 years of age.

§176.1018. Driver Education Certificates (DE-964 and ADE-1317).

(a) The DE-964 and ADE-1317 shall be issued only to primary driver education schools. The primary driver education school shall maintain a record reconciling all DE-964s and ADE-1317s that are distributed to branch driver education schools and contract sites.

(b) School owners shall be responsible for the DE-964 and ADE-1317 in accordance with this subsection.

(1) A licensed or exempt driver education school may request the serially numbered DE-964s and ADE-1317s by submitting an order form provided by the Texas Education Agency (TEA) stating the number of DE-964s and ADE-1317s to be purchased and including payment of all appropriate fees. The form shall have the original signature of the driver education school owner or school director.

(2) A driver education school shall not transfer DE-964s and ADE-1317s to a school other than the school for which the certificates were ordered from TEA[~~,~~] without written approval from the division.

[~~(3) Each driver education school owner shall maintain the TEA copies of the DE-964s in ascending numerical order. The driver education school owner shall submit the TEA copies of all issued certificates to TEA at least once every 90 days. The school owner shall return unissued DE-964s to TEA within 30 days from the date the school discontinues the driver education program, unless otherwise notified.~~]

(3) [~~(4)~~] Each driver education school owner shall ensure that the policies concerning the DE-964 and ADE-1317 are followed and communicated to all instructors and employees of the school and that the DE-964s and ADE-1317s are signed and issued as approved by TEA.

(4) [~~(5)~~] The driver education school owner or school director shall maintain effective protective measures to ensure that unissued DE-964s and ADE-1317s are secure. The driver education school owner or school director shall report all unaccounted DE-964s and ADE-1317s to the division within five working days of the discovery of the incident. In addition, the driver education school shall be responsible for conducting an investigation to determine the circumstances surrounding the unaccounted DE-964s and ADE-1317s. A report of the findings of the investigation, including preventative measures for recurrence, shall be submitted to the division within 30 days of the discovery. Failure to provide adequate security may result in action against the instructor and/or school approvals and licenses. Each unaccounted DE-964 or ADE-1317 may be considered a separate violation within the meaning of Texas Education Code, §1001.553(b).

(5) [~~(6)~~] No driver education school owner or employee shall complete, issue, or validate a DE-964 or ADE-1317 to a person who has not successfully completed the entire portion of the course for which the DE-964 or ADE-1317 is being issued.

(c) If a driver education school issues a duplicate DE-964 or ADE-1317, the duplicate shall indicate the control number of the original DE-964 or ADE-1317.

§176.1019. Alternative Method of Instruction for Driver Education Course.

(a) Approval process. The commissioner of education may approve an alternative method whereby a driver education school is approved to teach all or part of the classroom portion of an approved driver education course by an alternative method of instruction (AMI) that does not require students to be present in a classroom that meets the following requirements.

(1) Standards for approval. The commissioner may approve a driver education school to teach all or part of the classroom portion of an approved driver education course by an AMI that does not require students to be present in a classroom only if:

(A) the AMI includes testing and security measures that the commissioner determines are at least as secure as the measures available in the usual classroom setting;

(B) the course satisfies any other requirement applicable to a course in which the classroom portion is taught to students in the usual classroom setting;

(C) a student and instructor are in different locations for a majority of the student's instructional period;

(D) the AMI instructional activities are integral to the academic program; and

(E) extensive communication between a student and instructor and among students is emphasized.

(2) Application. The school shall submit a completed AMI application along with the appropriate fee. The application for AMI approval shall be treated the same as an application for the approval of a driver education traditional course, and the AMI must deliver the school's approved curriculum as aligned with the Program of Organized Instruction for Driver Education and Traffic Safety.

(3) School license required. A person or entity offering a classroom driver education course to Texas students by an AMI must hold a driver education school license. The driver education school is responsible for the operation of the AMI.

(b) Course content. The AMI must deliver the same topics, sequence, and course content as the school's approved traditional driver education course.

(1) Course topics. The time requirements for the course content described in §176.1007(a) and (b)(1)(C) of this title (relating to Courses of Instruction) shall be met.

(2) Editing. The material presented in the AMI shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(3) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the course.

(4) Student breaks. The AMI is allowed 5 minutes of break per instructional hour for all phases, for a total of 160 minutes of break time. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(5) Minimum content. The AMI shall present sufficient instructional content so that it would take a student a minimum of 32 hours (1,920 minutes) to complete the course. A course that demonstrates that it contains 1,760 minutes of instructional content shall mandate that students take 160 minutes of break time or provide additional educational content for a total of 1,920 minutes (32 hours). In order to demonstrate that the AMI contains sufficient content, the AMI shall use the following methods.

(A) Word count. For written material that is read by the student, the total number of words in the written sections of the course shall be divided by 180. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. There shall be a minimum of 120 minutes of multimedia presentation. The school owner shall calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 640 minutes.

(C) Charts and graphs. The AMI may assign one minute for each chart or graph.

(D) Examinations. The school owner may allocate up to 60 seconds for questions presented over the Internet and 30 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts, graphs, and breaks equals or exceeds the minimum 1,920 minutes, the AMI has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the AMI may submit alternate methodology to demonstrate that the AMI meets the minimum 32-hour requirement.

(6) Academic integrity. The academic integrity of the AMI for a classroom driver education course shall include:

(A) goals and objectives that are measurable and clearly state what the participants should know or be able to do at the end of the course;

(B) a clear, complete driver education classroom course overview and syllabus;

(C) content and assignments that are of sufficient rigor, depth, and breadth to teach the standards being addressed;

(D) literacy and communication skills that are incorporated and taught as an integral part of the AMI;

(E) sufficient learning resources and materials to increase student success available to students before the AMI begins;

(F) instruction requirements that are consistent with course goals, representative of the scope of the course, and clearly stated;

(G) communication processes that are provided to students, parents, and mentors on how to communicate with the school and instructor, including information on the process for these communications and for timely and frequent feedback about student progress;

(H) information addressing issues associated with the use of copyrighted materials; and

(I) if online, clearly stated academic integrity and netiquette (Internet etiquette) expectations regarding lesson activities, discussions, e-mail communications, and plagiarism.

(7) Instructional design. Instructional design of AMI for classroom driver education shall:

(A) include a clear understanding of student needs and incorporate varied ways to learn and multiple levels of mastery of the curriculum;

(B) ensure each lesson includes a lesson overview, objectives, resources, content and activities, assignments, and assessments to provide multiple learning opportunities for students to master the content;

(C) include concepts and skills that students will retain over time;

(D) include activities that engage students in active learning;

(E) include the instructor engaging students in learning activities that address a variety of learning styles and preferences to master course content;

(F) include instruction that provides opportunities for students to engage in higher-order thinking, critical-reasoning activities, and thinking in increasingly complex ways;

(G) include a statement that notifies the student of the school owner's security and privacy policy regarding student data, including personal and financial data; and

(H) include assessment and assignment answers and explanations.

(c) Personal validation. The AMI shall maintain a method to validate the identity of the person taking the course. The personal validation system shall incorporate one of the following requirements.

(1) School initiated method. Upon approval by the Texas Education Agency (TEA), the AMI may use a method that includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(2) Third party data method. The online course shall ask a minimum of 60 personal validation questions randomly throughout the course from a bank of at least 200 questions drawn from a third party data source.

(A) Time to respond. The student must correctly answer the personal validation question within 60 seconds for questions presented over the Internet and 30 seconds for questions presented by telephone.

(B) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The AMI shall exclude the student from the course after the student has incorrectly answered more than 30% of the personal validation questions.

(D) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(d) Content validation. The AMI shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) Timers. The AMI shall include built-in timers to ensure that 1,920 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The AMI shall ask at least 1 course validation question following each multimedia clip of more than 60 seconds.

(A) Test bank. For each multimedia presentation that exceeds 60 seconds, the AMI shall have a test bank of at least 4 questions.

(B) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the AMI shall either require the student to view the multimedia clip again or the AMI shall fail the student from the course. If the AMI requires the student to view the multimedia clip again, the AMI shall present a different question from its test bank for that multimedia clip. The AMI may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The AMI shall not identify the correct answer to the multimedia question.

(3) Mastery of course content. The AMI shall test the student's mastery of the course content by asking questions from each of the modules listed in the program of organized instruction for driver education and traffic safety.

(A) Test bank. The test bank for course content mastery questions shall include at least:

(i) 20 questions from each of modules 1, 8, and 12 listed in the program of organized instruction for driver education and traffic safety; and

(ii) 10 questions from each of the remaining modules.

(B) Placement of questions. The mastery of course content questions shall be asked at the end of each module.

(C) Question difficulty. Course content mastery questions shall be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Repeat and retest options. The AMI may use the following options for students who fail an examination to show mastery of course content.

(A) Repeat the failed module. If the student misses more than 30% of the questions asked on a module examination, the AMI shall require that the student take the module again. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the module, the AMI shall again test the student's mastery of the material. The AMI shall present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Retest the final examination. If the student misses more than 30% of the questions asked on the final examination, the AMI shall retest the student in the same manner as the failed examination, using different questions from its test bank. If the student fails the same unit examination or the comprehensive final examination three times, the student shall fail the course.

(e) Student records. The AMI shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. The school shall ensure that the student record is readily, securely, and reliably available for inspection by a TEA-authorized representative. The student records shall contain all information required in §176.1016 of this title (relating to Records) and the following information.

(1) A record of all questions asked and the student's responses.

(2) The name or identity number of the staff member entering comments or revalidating the student.

(3) The name or identity number of the staff member retesting the student.

(4) If any answer to a question is changed by the school for a student who inadvertently missed a question, the school shall provide both answers and a reasonable explanation for the change.

(5) A record of the time the student spent in each unit of the AMI and the total instructional time the student spent in the course.

(f) Additional requirements for Internet courses. Courses delivered via the Internet or technology shall also comply with the following requirements.

(1) An AMI may allow the student re-entry into the course by username and password authentication or other means that are equally secure.

(2) The student shall be provided orientation training to ensure easy and logical navigation through the course. The student shall be allowed to freely browse previously completed material.

(3) The video and audio shall be clear and, when applicable, the video and audio shall be synchronized.

(4) If the AMI presents transcripts of a video presentation, the transcript shall be delivered concurrently with the video stream so that the transcript cannot be displayed if the video does not display on the student's computer.

(5) Each school offering an AMI must offer that AMI from a single domain. The AMI may accept students that are redirected to the AMI's domain, as long as the school license number appears on the source that redirects the student to the AMI domain. The student must be redirected to a webpage that clearly identifies the licensed school offering the AMI before the student begins the registration process, supplies any information, or pays for the course.

(6) Hardware, web browser, and software requirements must be specified.

(7) Prerequisite skills in the use of technology must be identified.

(8) Appropriate content-specific tools and software must be used.

(9) Universal design principles that ensure access for all students must be used.

(10) Online textbooks and other instructional materials used in an AMI must meet state standards.

(11) The school must offer the course instructor, school director, and school owner assistance with technical support and course management.

(g) Additional requirements for video courses.

(1) Delivery of the material. For AMIs delivered by the use of videotape, digital video disc (DVD), film, or similar media, the equipment and course materials may only be made available through a process that is approved by TEA.

(2) Video requirement. The video course shall include between 60 and 640 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 1,760 minutes of required instruction shall be video material that is relevant to required course instruction content.

(A) A video AMI shall ask, at a minimum, at least 1 course validation question for each multimedia clip of more than 60 seconds.

(B) A video AMI shall devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 60 seconds.

(h) Standards for AMIs using new technology. For AMIs delivered using technologies that have not been previously reviewed and approved by TEA, TEA may apply similar standards as appropriate and may also require additional standards. These standards shall be designed to ensure that the course can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the usual classroom setting.

(i) Modifications to the AMI. Except as provided by paragraph (1) of this subsection, a change to a previously approved AMI shall not be made without the prior approval of TEA. The licensed school for the approved course on which the AMI is based shall ensure that any modification to the AMI is implemented by all schools endorsed to offer the AMI.

(1) A school may submit to the TEA a request for immediate implementation of a proposed change that is insignificant or that protects the interest of the consumer such that immediate implementation is warranted. The request shall include:

(A) a complete description of the proposed change;

(B) the reason for the change;

(C) the reason the requestor believes the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted; and

(D) an explanation of how the change will maintain the course or AMI in compliance with state law and the rules specified in this chapter.

(2) The TEA may request additional information regarding a proposed change from the school making a request under paragraph (1) of this subsection.

(3) The TEA will respond to any request made under paragraph (1) of this subsection within five working days of receipt.

(A) If the TEA determines that the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted, the requestor may immediately implement the change. The licensed school for the approved course on which the AMI is based shall ensure that the change is implemented.

(B) If the TEA determines that the proposed change is neither insignificant nor protects the interest of the consumer such that immediate implementation is warranted, the TEA shall notify the requestor of that determination and the change may not be made unless the TEA approves the change following a complete review.

(4) A determination by the TEA to allow immediate implementation under paragraph (1) of this subsection does not constitute final approval by the TEA of the change. The TEA reserves the right to conduct further review after the change is implemented and to grant or deny final approval based on whether the change complies with state law and rules specified in this chapter.

(5) If, following further review, a change in an AMI that has been immediately implemented pursuant to paragraph (1) of this subsection is determined not to be in compliance with state law and rules specified in this chapter, the TEA:

(A) shall notify the course provider affected by the change of:

(i) the specific provisions of state law or rules with which the AMI change is not in compliance; and

(ii) a reasonable date by which the AMI must be brought into compliance;

(B) shall not, for the period between the implementation of the change and the date specified under subparagraph (A)(ii) of this paragraph:

(i) seek any penalty relating to the non-compliance;

(ii) take any action to revoke or deny renewal of a license of a school or course provider based on the change; or

(iii) withdraw approval of a course or AMI based on the change; and

(C) is not required to specify the method or manner by which the school alters the AMI to come into compliance with state law and the rules in this chapter.

(6) If the TEA allows immediate implementation pursuant to paragraph (1) of this subsection and later determines that the description of the change or the request was misleading, materially inaccurate, not substantially complete, or not made in good faith, paragraph (5)(B) of this subsection does not apply.

(7) A school who immediately implements a change pursuant to paragraph (1) of this subsection and fails to bring the AMI into compliance prior to the date allowed under paragraph (5)(A)(ii) of this subsection may be determined to be in violation of state law or the rules in this chapter after that date.

(8) A school that immediately implements a change under paragraph (1) of this subsection assumes the risk of final approval being denied and of being required to come into compliance with state law and the rules in this chapter prior to the date allowed under paragraph

(5)(A)(ii) of this subsection, including bearing the cost of reversing the change or otherwise modifying the AMI to come into compliance with state law and the rules in this chapter.

(j) Termination of the school's operation. Upon termination, schools shall deliver any missing student data to TEA within five days of termination.

(k) Renewal of AMI approval. The AMI approval must be renewed and updated to ensure timeliness every two years. The renewal document due date shall be March 1, 2012, and every two years thereafter.

(1) For approval, the school shall:

(A) update all the statistical data, references to law, and traffic safety methodology with the latest available data; and

(B) submit a statement of assurance that the AMI has been updated to reflect the latest applicable laws and statistics.

(2) Failure to make necessary changes or to submit a statement of assurance documenting those changes shall be cause for revocation of the AMI approval.

(3) The commissioner may alter the due date of the renewal documents by giving the approved AMI six months notice. The commissioner may alter the due date in order to ensure that the AMI is updated six months after the effective date of new state laws passed by the Texas Legislature.

(l) Access to instructor. The school must establish hours that the student may access the instructor. With the exception of circumstances beyond the control of the school, the student shall have access to the instructor during the specified hours.

(m) Enrollment guidelines. The AMI for driver education classroom that desires to instruct students age 14 to under 25 years of age shall provide the same beginning and ending dates for each student in the same class of 36 or less. No student shall be allowed to enroll and start the classroom phase after the sixth hour of classroom instruction has been completed.

(n) Required training. The instructor must meet the professional teaching standard established by a state licensing agency or have academic credentials in the field in which he or she is teaching and must have been trained to teach the AMI classroom driver education course. Each instructor of an AMI classroom driver education course offered by a driver education school must:

(1) have a ST, DET, STA-F, or TA-F driver education license; and

(2) successfully complete the appropriate professional development course before teaching an AMI classroom driver education course.

§176.1020. Application Fees and Other Charges.

(a) If a driver education school changes ownership, the new owner shall pay the same fee as that charged for an initial fee for a school. In cases where, according to §176.1003(e)(4) of this title (relating to Driver Education School Licensure), the change of ownership is substantially similar, the new owner shall pay the statutory fees allowed by Texas Education Code (TEC), §1001.151.

(b) A late renewal fee shall be paid in addition to the annual renewal fee if the school fails to postmark a complete application for renewal at least 30 days before the expiration date of the driver education school license. The requirements for a complete application for renewal are found in §176.1003(g) of this title. The complete renewal application must be postmarked or hand-delivered with a date 30 or more days before the expiration date of the license.

(c) Driver education instructors applying for school licensure as required by TEC, §1001.151, shall pay the fee amount set forth in statute.

(d) License, application, and registration fees shall be collected by the commissioner of education and deposited with the state treasurer according to the following schedule.

(1) The initial fee for a primary school is $1,000.

(2) The initial fee for a branch school is $850.

(3) The renewal fee for a driver education school is $200.

(4) The fee for a change of address of a driver education school is $180.

(5) The fee for a change of name of a driver education school or to change the name of an owner is $100.

(6) The application fee for each additional driver education course is $25.

(7) The application fee for each school director is $30.

(8) The application fee for each assistant director and each administrative staff member is $15.

(9) Each application for an original driver education instructor's license shall be accompanied by a processing fee of $50, except that the fee may not be collected for an applicant who is currently teaching a driver education course in a public school in this state.

(10) The annual instructor license fee is $25.

(11) The late instructor renewal fee is $25.

(12) The duplicate driver education instructor license fee is $8.00.

(13) The fee for an investigation at a school to resolve a complaint is $1,000.

(14) The driver education school late renewal fee is $200.

(15) The fee for a DE-964 is $2.00.

(16) The fee for an ADE-1317 is $3.00.

(17) The application fee for approval of a 32-hour Alternative Method of Instruction (AMI) for driver education classroom is $15,000.

(18) The application fee for approval of part of a 32-hour AMI for driver education classroom is $500 per instructional hour.

(19) The application fee for approval of a traditional driver education course exclusively for adults is $500.

(20) The application fee for approval of an online driver education course exclusively for adults is $9,000.

(e) Failure to pay a required fee or penalty assessed shall be cause for revocation or denial of any license held by a school or instructor of whom the fee or penalty is required. Revocation or denial proceedings shall be started if the fee is not paid within 30 days of the expiration date of the appeal period set forth in TEC, Chapter 1001.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005297
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 475-1497

♦ ♦ ♦

19 TAC §176.1019

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the TEC, §1001.052, which requires the agency to adopt and administer comprehensive rules governing driving safety courses; and §1001.053, which requires the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education. Section 1001.053 authorizes the commissioner to adopt rules to ensure the integrity of approved driving safety courses and to enhance program quality.

The repeal implements the TEC, §1001.052 and §1001.053.

§176.1019. Application Fees and Other Charges.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005298
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 475-1497

♦ ♦ ♦

SUBCHAPTER BB. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVING SAFETY SCHOOLS AND COURSE PROVIDERS

19 TAC §§176.1101, 176.1103 - 176.1110, 176.1113, 176.1114, 176.1117

The amendments are proposed under the TEC, §1001.052, which requires the agency to adopt and administer comprehensive rules governing driving safety courses; §1001.053, which requires the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education. Section 1001.053 authorizes the commissioner to adopt rules to ensure the integrity of approved driving safety courses and to enhance program quality; §1001.1025, which requires the agency by rule to require that information relating to motorcycle awareness, the dangers of failing to yield the right-of-way to a motorcyclist, and the need to share the road with motorcyclists be included in the curriculum of any driver education course or driving safety course; and §1001.110, which requires the commissioner by rule to require that information relating to the effect of using a wireless communication device or engaging in other actions that may distract a driver on the safe or effective operation of a motor vehicle be included in the curriculum of each driver education course or driving safety course.

The amendments implement the TEC, §§1001.052, 1001.053, 1001.1025, and 1001.110.

§176.1101. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advertising--Any affirmative act, whether written or oral, designed to call public attention to a school and/or course in order to evoke a desire to patronize that school and/or course. This includes Meta tags and search engine listings.

(2) Break--An interruption in a course of instruction occurring after the course introduction and before the comprehensive examination [~~exam~~] and course summation.

(3) Change of ownership of a school or course provider--A change in the control of the school or course provider. Any agreement to transfer the control of a school or course provider is considered to be a change of ownership. The control of a school or course provider is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school or course provider has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or course provider or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school or course provider.

(4) Clock hour--50 minutes of instruction in a 60-minute period for a driving safety course.

(5) Course validation question--A question designed to establish the student's participation in the course and comprehension of the course material by requiring the student to answer a question regarding a fact or concept taught in the course.

(6) Division--The division of the Texas Education Agency (TEA) responsible for administering the provisions of the law, rules, regulations, and standards as contained in this chapter and licensing driver training programs.

(7) Division director--The person designated by the commissioner of education to carry out the functions and regulations governing the driving safety schools and course providers and designated as director of the division responsible for licensing driver training programs.

(8) Final examination question--A question designed to measure the student's comprehension and knowledge of course material presented after the instruction is completed.

(9) Good reputation--A person is considered to be of good reputation if:

(A) there are no felony convictions, unless the applicant can successfully demonstrate that the applicant has been rehabilitated;

(B) there are no convictions involving crimes of moral turpitude;

(C) within the last seven years, the person has never been successfully sued for fraud or deceptive trade practice;

(D) the person has not owned or operated a school or course provider with serious violations[~~;~~] and has never owned or operated a school or course provider that [~~which~~] closed with violations, including, but not limited to, unpaid refunds or selling, trading, or transferring a driver education certificate or uniform certificate of course completion to any person or school not authorized to possess it. In making this determination, the division may consider the seriousness and number of violations, efforts made to correct the violations, and the history of similar violations;

(E) the person has not failed to provide material information to representatives of TEA or falsified instructional records or any documents required for approval or continued approval;

(F) in the case of an instructor, there are no misdemeanor or felony convictions involving driving while intoxicated over the past seven years; and

(G) in the event that an instructor or applicant has received deferred adjudication of guilt from a court of competent jurisdiction, a determination can be made upon review of evidence that the conduct underlying the basis of the deferred adjudication has not rendered the person unworthy to provide driver training instruction. When determining underlying conduct, the commissioner may consider the facts and circumstances surrounding the deferred adjudication.

(10) Inactive course--A driving safety or specialized driving safety course for which no uniform certificates of completion or course completion certificate numbers have been purchased for 36 months or longer.

(11) Instructor trainer--A driving safety instructor or specialized driving safety instructor who has been trained to prepare instructors to give instruction in a specified curriculum.

(12) Mail or commercial delivery--First Class U.S. mail or equivalent commercial delivery services that deliver no sooner than the day following successful course completion. Electronic delivery such as e-mail or facsimile is not acceptable as a commercial delivery service.

(13) Moral turpitude--Conduct that is inherently immoral or dishonest.

(14) New course--A driving safety or specialized driving safety course is considered new when it has not been approved by TEA to be offered previously; or has been approved by TEA and become inactive [~~offered and then discontinued~~]; or the content, lessons, or delivery of the course have been changed to a degree that a new application is requested and a complete review of the application and course presentation is necessary to determine compliance.

(15) Personal validation question--A question designed to establish the identity of the student by requiring an answer related to the student's personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the student.

(16) Public or private school--For the purpose of these rules, a public or private school is an accredited public or non-public secondary school.

(17) Specialized driving safety course--A six-hour driving safety course that includes at least four hours of training intended to improve the student's knowledge, compliance with, and attitude toward the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(18) Uniform certificate of course completion--A document with a serial number purchased from the division that is printed, administered, and supplied by course providers or primary consignees for issuance to students who successfully complete an approved driving safety or specialized driving safety course and that meets the requirements of Texas Transportation Code, Chapter 543, and Texas Code of Criminal Procedure, Article 45.051 or 45.0511. This term encompasses all parts of an original or duplicate uniform certificate of course completion. It is a government record.

§176.1103. Driving Safety School Licensure.

(a) Application for driving safety school. An application for a license for a driving safety school shall be made on forms supplied by the Texas Education Agency (TEA) and submitted to TEA by the course provider. The application shall:

(1) include individual requests for approval for each multiple classroom of the school. The applications shall be made on forms provided by TEA. The driving safety school shall receive TEA approval for each location prior to advertising or offering a driving safety course at the location; and

(2) include verification from the licensed course provider that the school is authorized to provide the approved driving safety or specialized driving safety course and that the school will operate in compliance with all course provider policies and procedures.

(b) Verification of ownership for driving safety school.

(1) In the case of an original or change of owner application for a driving safety school, the owner of the school shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division may require additional evidence to verify ownership.

(2) With the renewal application, the owner of the school shall provide verification that no change in ownership has occurred. The division may require additional evidence to verify that no change of ownership has occurred.

(c) Effective date of the driving safety school license. The effective date of the driving safety school license shall be the date the license is issued. Licenses that are received at the driving safety school prior to the effective date are not valid until the effective date shown on the license. [~~Exceptions may be made if the applicant was in full compliance on the effective date of issue.~~]

(d) Purchase of driving safety school.

(1) A person or persons purchasing a licensed driving safety school shall obtain an original license.

(2) In addition, copies of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the school shall be submitted to TEA. The contract or any instrument transferring the ownership of the driving safety school shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the school shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(e) New location.

(1) The division shall be notified in writing of any change of address of a driving safety school at least five working days before the move.

(2) The school must submit the appropriate fee and all documents designated by the division as being necessary. The documents shall be submitted to TEA by the course provider on behalf of the school. A driving safety school license may be issued after the required documents are approved.

(3) The school must maintain a current mailing address at the division.

(f) Renewal of driving safety school license. A complete application for the renewal of a license for a driving safety school shall be postmarked or hand-delivered by the school to the course provider at least 30 days before the expiration of the license and shall include the following:

(1) completed application form for renewal;

(2) current list of instructors;

(3) current list of classrooms;

(4) annual renewal fee, if applicable; and

(5) any other revision or evidence of which the school has been notified in writing that is necessary to bring the school's application for a renewal license to a current and accurate status.

(g) Denial, revocation, or conditional license. For schools approved to offer only one driving safety course, the authority to operate a driving safety school shall cease if the course provider license is denied or revoked or if the course provider removes all authorization to teach the course. The license of the driving safety school may continue for 60 calendar days to allow the school owner to obtain approval to operate under a different course provider license. At the end of the 60-day period, the school license shall be revoked unless the school will offer an approved course. A current driving safety school license shall not be renewed without an approved course. A driving safety school license may be denied, revoked, or conditioned separately from the license of the course provider.

(h) Notification of legal action. A school shall notify the division in writing of any legal action that is filed against the school, its officers, any owner, or any school instructor that might concern the operation of the school within five working days after the school, its officers, any owner, or any school instructor has commenced the legal action or has been served with legal process. Included with the written notification, the school shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(i) School closure.

(1) A school shall forward all records to the course provider responsible for the records within five business days of closure.

(2) The course provider shall provide TEA with written notice of a school closure within five business days after being notified of closure.

(3) The division may declare a school to be closed:

(A) as of the last day of attendance when written notification is received by TEA from the school owner or course provider stating that the school will close;

(B) when TEA staff determine by means of an on-site visit that the school facility has been vacated without prior notification of change of address given to TEA and without TEA approval of future plans to continue to operate;

[~~(C) when an owner with multiple school locations transfers all students from one school location to another school location without written notification and TEA approval of future plans to continue to operate;~~]

(C) [~~(D)~~] when the school owner allows the school license to expire; or

(D) [~~(E)~~] when the school does not have the facilities and equipment to operate pursuant to this subchapter.

(j) Course at public or private school. A school shall receive approval from TEA prior to conducting a course at a public or private school, and approval may be granted by TEA upon review of the agreement made between the licensed driving safety school and the public or private school. The course shall be subject to the same rules that apply at the licensed driving safety school, including periodic inspections by TEA representatives. An on-site inspection is not required prior to approval of the course.

§176.1104. Course Provider Licensure.

(a) Application for course provider. An application for a license for a course provider shall be made on forms supplied by the Texas Education Agency (TEA). An application from a course provider that is a primary consignee shall include evidence of permission from the course owner to operate as the primary consignee.

(b) Bond requirements for course provider. In the case of an original or a change of owner application, an original bond shall be provided. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file shall be submitted. The bond or the continuation agreement shall be executed on the form provided by TEA. Posting of a $25,000 bond shall satisfy the requirements for financial stability for a course provider.

(c) Course provider license. The course provider license shall indicate the name of the driving safety course for which approval is granted exactly as stated in the application for the course approval.

(d) Verification of ownership for course provider.

(1) In the case of an original or change of owner application for a course provider, the owner of the course provider shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division may require additional evidence to verify ownership.

(2) With the renewal application, the owner of the course provider shall provide verification that no change in ownership has occurred. The division may require additional evidence to verify that no change of ownership has occurred.

(e) Adequate educational and experience qualifications. The course provider shall provide as part of the application sufficient documentation to support adequate educational and experience qualifications in order to carry out the responsibilities of a course provider. Verifiable education and/or experience in administration and/or supervision shall be required. Adequate educational and experience qualifications have been satisfied if the course provider meets one of the following.

(1) A course provider who has owned or been a primary consignee of an approved driving safety course and has been fully operational as a course provider in the State of Texas for a continuous 12-month period before September 1, 1995, satisfies the educational and experience qualifications.

(2) A course provider who has an approved driving safety course but has not been fully operational as a course provider for a continuous 12-month period must submit evidence of at least 1 [~~one~~] year of experience in administration and/or supervision.

(3) A new course provider shall submit evidence of:

(A) at least 30 semester credit hours of education from an accredited postsecondary institution and 2 [~~two~~] years of paid experience in administration and/or supervision; or

(B) a combined total of three years of driver and traffic safety education or experience and administrative/management experience; however, a minimum of six months in each shall be required.

(f) Effective date of the course provider license. The effective date of the course provider license shall be the date the license is issued. Licenses that are received by the course provider prior to the effective date are not valid until the effective date shown on the license. [~~Exceptions may be made if the applicant was in full compliance on the effective date of issue.~~]

(g) Purchase of course provider.

(1) A person or persons purchasing a licensed course provider shall obtain an original license. The application for a new course provider that is a primary consignee shall include evidence of permission from the course owner to operate as the primary consignee.

(2) In addition, copies of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the course provider shall be submitted to TEA. The contract or any instrument transferring the ownership of the course provider shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the course provider shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(3) A change of ownership of a course provider is considered substantially similar:

(A) in the case of ownership by an individual, when the individual transfers ownership to a corporation in which the individual owns 100% of the stock of the corporation;

(B) in the case of ownership by a corporation, when the ownership is transferred to a partnership in which the stockholders possess equal interest in the owning partnership; or

(C) in the case of ownership by a partnership or a corporation that transfers ownership to a corporation in which the partners hold interest that equals the interest of the owning partnership, or the owning corporation transfers ownership to a different corporation in which the stockholders for both corporations possess equal shares.

(4) In the event a change of ownership is substantially similar, the applicant pays a change in ownership fee as opposed to an initial application fee.

(h) New location.

(1) The division shall be notified in writing of any change of address of a course provider at least five working days before the move.

(2) The course provider must submit the appropriate fee and all documents designated by the division as being necessary. A course provider license may be issued after the complete required documents are approved.

(i) Renewal of course provider license. A complete application for the renewal of a license for a course provider shall be submitted before the expiration of the license and shall include the following:

(1) completed application for renewal;

(2) annual renewal fee, if applicable;

(3) a new [~~revised~~] continuing education course [~~for the next year~~];

(4) executed bond or executed continuation agreement for the bond currently approved by, and on file with, TEA; and

(5) any other revision or evidence of which the course provider has been notified in writing that is necessary to bring the course provider's application for a renewal license to a current and accurate status.

(j) Notification of legal action. A course provider shall notify the division in writing of any legal action that is filed against the course provider, its officers, any owner, or any school instructor that might concern the operation of the course provider within five working days after the course provider becomes aware of the fact that the legal action has commenced or the legal process has been served. Included with the written notification, the course provider shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(k) Course provider closure. A course provider owner shall notify TEA at least five business days before the course provider closure. The course provider shall provide written notice of the actual discontinuance of the operation the day of cessation of business. A course provider shall make all records and all used and unused uniform certificates of course completion and course completion certificate numbers available for review by TEA within 30 days of the date the course provider ceases operation.

(l) Facility location. Course providers and all course provider facilities that process, deliver, or store curriculum materials, student records, or uniform certificates of course completion and certificate numbers to be used for Texas courses must be located within the United States.

§176.1105. Driving Safety School and Course Provider Responsibilities.

(a) Course providers must be located, or maintain a registered agent, in the State of Texas. All instruction in a driving safety or specialized driving safety course shall be performed in locations approved by the Texas Education Agency (TEA) and by TEA-licensed instructors. However, a student instructor trainee may teach the 12 hours necessary for licensing in a TEA-approved location under the direction and in the presence of a licensed driving safety or specialized driving safety instructor trainer who has been trained in the curriculum being instructed.

(b) Each course provider or employee shall:

(1) ensure that instruction of the course is provided in schools currently approved to offer the course, and in the manner in which the course was approved;

(2) ensure that the course is provided by persons who have a valid current instructor license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(3) ensure that schools and instructors are provided with the most recent approved course materials and relevant data and information pertaining to the course within 60 days of approval. Instructor training may be required and shall be addressed in the approval notice;

(4) not falsify driver training records;

(5) ensure that applications for licenses or approvals are forwarded to TEA within ten days of receipt at the course provider facilities;

(6) ensure that instructor performance is monitored. A written plan describing how instructor performance will be monitored and evaluated shall be provided to the schools. The plan shall identify the criteria upon which the instructors will be evaluated, the procedure for evaluation, the frequency of evaluation (a minimum of once a year), and the corrective action to be taken when instructors do not meet the criteria established by the course provider. The instructor evaluation forms must be kept on file either at the course provider or school location for a period of one year;

(7) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest;

(8) develop and maintain a means to ensure the privacy of student data, including personal and financial data, and make the corporate privacy policy available to all course students;

(9) develop and maintain a TEA-approved [~~an agency-approved~~] method for printing and issuing original and duplicate uniform certificates of course completion that, to the greatest extent possible, prevents the unauthorized production or misuse of the certificates; [~~and~~]

(10) report original and duplicate certificate data, by secure electronic transmission, to TEA within 30 [~~seven~~] days of issue using guidelines established and provided by TEA. The issue date indicated on the certificate shall be the date the course provider mails the certificate to the student; and [~~.~~]

(11) ensure that each uniform certificate of course completion contains TEA complaint contact information.

(c) Each driving safety school owner-operator or employee shall:

(1) ensure that each individual permitted to give instruction at the school or any classroom location has a valid current instructor's license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(2) prohibit an instructor from giving instruction or prohibit a student from securing instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Texas Alcoholic Beverage Code, §1.04(1); and the Texas Health and Safety Code, [~~§~~] §481.002[~~, 484.002,~~] and §485.001;

(3) provide instruction or allow instruction to be provided only in courses that are currently on the school's list of approved courses;

(4) complete, issue, or validate a verification of course completion only for a person who has successfully completed the entire course;

(5) not falsify driver training records;

(6) ensure that instructors give students the opportunity to evaluate the course and instructor on an official evaluation form;

(7) evaluate instructor performance in accordance with the course provider plan;

(8) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest;

(9) develop and maintain a means to ensure the privacy of student data, including personal and financial data, and make the corporate privacy policy available to all course students; and

(10) pay a fee to the course provider that is equal to the fee paid by the course provider to TEA for course completion certificate numbers for original certificates provided for the students of that school within seven calendar days of the date each student successfully completes the driving safety course.

(d) For the purposes of Texas Education Code, Chapter 1001, and this chapter, each person employed by or associated with any driving safety school shall be deemed an agent of the driving safety school, and the school may share the responsibility for all acts performed by the person which are within the scope of the employment and which occur during the course of the employment.

§176.1106. Administrative Staff Members.

(a) Each driving safety school shall designate one person as the administrative staff member.

(1) Duties. The school administrative staff member shall be responsible for all actions related to day-to-day operation and administration of the school, which includes supervising instructors, organizing and scheduling classes, maintaining the school plant, and maintaining proper administrative records.

(2) Qualifications. The administrative staff member shall have a high school diploma, GED, or equivalent, or be a licensed driving safety or specialized driving safety instructor.

(b) During any period when the school administrative staff member is required to be absent from the school, the owner shall designate a liaison to provide student records, contracts, and schedules to Texas Education Agency (TEA) staff. The liaison is not required to pay an application fee; however, the school shall notify TEA in writing as to who will be appointed as liaison.

(c) An individual shall be approved by TEA as the administrative staff member before employment as such.

(d) The school administrative staff member or liaison shall assist TEA representatives during any [~~announced~~] compliance visit by TEA.

(e) Violations at the school or by the administrative staff member may result in removal of the approval of the administrative staff member.

§176.1107. Driving Safety Instructor License.

(a) Application for licensing as a driving safety or specialized driving safety instructor shall be made on forms supplied by the Texas Education Agency (TEA). A person is qualified to apply for a driving safety or specialized driving safety instructor license who:

(1) is of good reputation; and

(2) holds a valid driver's license for the preceding five years in the areas for which the individual is to teach, which has not been suspended, revoked, or forfeited in the past five years for traffic-related violations.

(b) A person applying for an original driving safety or specialized driving safety instructor's license shall submit to the course provider, who shall submit to TEA the following:

(1) complete application as provided by TEA;

(2) processing and annual instructor licensing fees;

(3) documentation showing that all applicable educational requirements have been met. Original documentation shall be provided upon the request of the division;

(4) a clear and legible photocopy of the current, valid driver's license issued to the applicant; and

(5) any other information necessary to show compliance with applicable state and federal requirements.

(c) A person applying for a driving safety or specialized driving safety instructor license may qualify for the following endorsements.

(1) Driving safety instructor.

(A) The application shall include evidence of completion of 24 hours of training covering techniques of instruction and in-depth familiarization with material contained in the driving safety curriculum in which the individual is being trained and 12 hours of practical teaching in the same driving safety course and a statement signed by the course provider recommending the applicant for licensing. Alternatively, a currently licensed instructor may submit a copy of a current driving safety instructor license, a specialized driving safety instructor license, or a current driver education instructor license and evidence of 12 hours of training and 6 [~~six~~] hours of demonstrative presentation teaching or practical teaching in the curriculum to be licensed. The 12 hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the driving safety curriculum. The six hours of demonstrative presentation or practical teaching shall be in the driving safety curriculum and under the direct supervision of a licensed driving safety instructor trainer endorsed in the same driving safety curriculum and shall be accompanied by a statement signed by the course provider recommending the applicant for licensing.

(B) The responsibilities of a driving safety instructor include instructing a TEA-approved driving safety course specific to the curriculum in which the instructor is endorsed and for which the certificate is issued.

(2) Specialized driving safety instructor.

(A) The application shall include evidence of completion of 24 hours of training and 12 hours of practical teaching. The 24 hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the specialized driving safety curriculum. The 12 hours of practical teaching shall be in the same specialized driving safety curriculum and shall be accompanied by a statement signed by the course provider recommending the applicant for licensing. Alternatively, the applicant may submit a copy of a current driving safety instructor license or current or past certification as a National Highway Traffic Safety Association Child Passenger Safety technician or instructor and 12 hours of training and 6 [~~six~~] hours of demonstrative presentation or practical teaching. The 12 hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the specialized driving safety curriculum. The six hours of demonstrative presentation or practical teaching shall be in the same specialized driving safety curriculum and under the direct supervision of a licensed specialized driving safety instructor trainer endorsed in the same specialized driving safety curriculum and shall be accompanied by a statement signed by the course provider recommending the applicant for licensing.

(B) The responsibilities of a specialized driving safety instructor include instructing a TEA-approved specialized driving safety course specific to the curriculum in which the instructor is endorsed and for which the certificate is issued.

(3) Driving safety instructor trainer.

(A) The application shall include a statement signed by the driving safety course provider (if different than the applicant) recommending the instructor as an instructor trainer and evidence of one of the following:

(i) a Texas teaching certificate with driver education endorsement and 30 hours of experience, exclusive of the 36-hour instructor development course, in the same driving safety course for which the individual is to teach;

(ii) a teaching assistant certificate and 30 hours of experience, exclusive of the 36-hour instructor development course, in the same driving safety course for which the individual is to teach;

(iii) completion of all the requirements of a driving safety instructor and 120 hours of verifiable experience as a licensed driving safety instructor, of which the most recent 30 hours shall be in the same driving safety course for which the individual is to teach; or

(iv) proof of authorship of an approved driving safety course. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the division director's designee the ability to teach the course and instructor training course prior to being licensed.

(B) The responsibilities of a driving safety instructor trainer include instructing a TEA-approved driving safety course, supervising instructor trainees, and signing as a driving safety instructor trainer for the records of practical teaching and/or demonstrative presentation for driving safety instructor trainees.

(4) Specialized driving safety instructor trainer.

(A) The application shall include a statement signed by the driving safety course provider (if different than the applicant) recommending the instructor as an instructor trainer, a copy of [~~a~~] current or past certification [~~certificate~~] as a National Highway Traffic Safety Association Child Passenger Safety technician or instructor, and evidence of one of the following:

(i) a Texas teaching certificate with driver education endorsement and 30 hours of experience, exclusive of the 36-hour instructor development course, in the same specialized driving safety course for which the individual is to teach;

(ii) a teaching assistant certificate and 30 hours of experience, exclusive of the 36-hour instructor development course, in the same specialized driving safety course for which the individual is to teach;

(iii) completion of all the requirements for a specialized driving safety instructor license and 120 hours of verifiable experience as a licensed driving safety instructor, of which the most recent 30 hours shall be in the same specialized driving safety course for which the individual is to teach; or

(iv) proof of authorship of an approved specialized driving safety course. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the division director's designee the ability to teach the course and the instructor training course prior to being licensed.

(B) The responsibilities of a specialized driving safety instructor trainer include instructing a TEA-approved specialized driving safety course, supervising instructor trainees, and signing as a specialized driving safety instructor trainer for the records of practical

teaching and/or demonstrative presentation for the specialized driving safety instructor trainees.

(5) Instructor development course driving safety instructor trainer.

(A) The application shall include evidence of:

(i) completion of all the requirements for a driving safety instructor trainer plus an additional 60 hours of verifiable experience as a licensed driving safety instructor or driving safety instructor trainer in the same driving safety course for which the individual is to teach, or proof of authorship of an approved driving safety course. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the division director's designee the ability to teach the course and the instructor training course prior to being licensed; and

(ii) a statement signed by the driving safety course provider, if different than the applicant, recommending the individual as an instructor development course instructor trainer in driving safety.

(B) The responsibilities of an instructor development course driving safety instructor trainer include instructing a TEA-approved driving safety course, supervising instructor trainees, training individuals to teach a TEA-approved driving safety course, and signing student instruction records and records of practical teaching and/or demonstrative presentation for driving safety trainees.

(6) Instructor development course specialized driving safety instructor trainer.

(A) The application shall include a copy of a current or past certification as a National Highway Traffic Safety Association Child Passenger Safety technician or instructor and evidence of:

(i) completion of all the requirements for a specialized driving safety instructor trainer plus an additional 60 hours of verifiable experience as a licensed specialized driving safety instructor or specialized driving safety instructor trainer in the same specialized driving safety course for which the individual is to teach, or proof of authorship of an approved specialized driving safety course. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the division director's designees the ability to teach the course and the instructor training course prior to being licensed; and

(ii) a statement signed by the driving safety course provider, if different than the applicant, recommending the individual as an instructor development course instructor trainer in specialized driving safety.

(B) The responsibilities of an instructor development course specialized driving safety instructor trainer include instructing a TEA-approved specialized driving safety course, supervising instructor trainees, training individuals to teach a TEA-approved specialized driving safety course, and signing student instruction records and records of practical teaching and/or demonstrative presentation for specialized driving safety trainees.

(d) A renewal application for a driving safety or specialized driving safety instructor license must be prepared using the following procedures.

(1) Application for renewal of an instructor license shall be made on a form provided by TEA and submitted by the course provider. The annual instructor licensing fee and evidence of continuing education shall accompany the application.

(2) A complete license renewal application shall be postmarked or hand-delivered to the course provider by the instructor at least 30 days before the date of expiration or a late instructor renewal fee shall be imposed. A complete application includes:

(A) completed application for renewal;

(B) annual renewal fee; and

(C) evidence of continuing education for each driving safety or specialized driving safety course endorsement.

(e) Continuing education requirements include the following.

(1) Evidence of completion of continuing education shall be provided for each instructor during the individual license renewal period on forms approved by TEA. A verification form indicating completion shall be provided to TEA by the course provider on behalf of the instructors. The form shall be signed by the instructor receiving the training and the course provider or designee.

(2) Carryover credit of continuing education hours shall not be permitted.

(3) A licensee may not receive credit for attending the same course more than once during the same licensing period.

(4) A licensed individual who teaches an approved continuing education course may receive credit for attending continuing education.

(5) A driving safety or specialized driving safety continuing education course shall not be used for the continuing education requirement for a driver education instructor license.

(f) An instructor who has allowed a previous license to expire shall file an original application on a form provided by TEA that is submitted by the course provider. The application shall include the processing and annual instructor licensing fees and evidence of continuing education completed within the last year. Evidence of educational experience may not be required to be resubmitted if the documentation is on file at TEA.

(g) All driving safety and specialized driving safety instructor license endorsement changes shall require the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes;

(2) the annual instructor licensing fee; and

(3) completion of renewal requirements for current endorsements.

(h) All other license change requests, including duplicate instructor licenses or name changes, shall be made in writing by the course provider and shall include payment of the duplicate instructor license fee.

(i) The course provider shall notify the TEA of an instructor's change of address in writing. Address changes shall not require payment of a fee.

(j) All instructors shall notify the division, school owner, and course provider in writing of any criminal complaint other than a minor traffic violation filed against the instructor within five working days of commencement of the criminal proceedings. The division may require a file-marked copy of the petition or complaint that has been filed with the court.

(k) All instructors shall provide training in an ethical manner so as to promote respect for the purposes and objectives of driver training [~~as identified in Texas Civil Statutes, Article 4413(29c), §2 (Vernon's 2001)~~].

(l) An instructor shall not make any sexual or obscene comments, advances, or gestures while performing the duties of an instructor.

(m) An instructor shall not falsify driver training records.

(n) The commissioner of education may suspend, revoke, or deny a license to any driving safety or specialized driving safety instructor trainer or instructor under any of the following circumstances.

(1) The applicant or licensee has been convicted of any felony, or an offense involving moral turpitude, or an offense of involuntary or intoxication manslaughter, or criminally negligent homicide committed as a result of the person's operation of a motor vehicle, or an offense involving driving while intoxicated or driving under the influence of drugs, or an offense involving tampering with a governmental record.

(A) These particular crimes relate to the licensing of instructors because such persons, as licensees of TEA, are required to be of good moral character and to deal honestly with courts and members of the public. Driving safety and specialized driving safety instruction involves accurate record keeping and reporting for court documentation and other purposes. In determining the present fitness of a person who has been convicted of a crime and whether a criminal conviction directly relates to an occupation, TEA shall consider those factors stated in Texas Occupations Code, Chapter 53.

(B) In the event that an instructor is convicted of such an offense, the instructor's license will be subject to revocation or denial. A conviction for an offense other than a felony shall not be considered by TEA under this paragraph if a period of more than ten years has elapsed since the date of the conviction or of the release of the person from the confinement, conditional release, or suspension imposed for that conviction, whichever is the later date. For seven years after an instructor is convicted of an offense involving driving while intoxicated, the instructor's license shall be recommended for revocation or denial.

(C) For the purposes of this paragraph, a person is convicted of an offense when a court of competent jurisdiction enters an adjudication of guilt on an offense against the person, whether or not:

(i) the sentence is subsequently probated and the person is discharged from probation; or

(ii) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(2) The applicant, licensee, any instructor, or agent is addicted to the use of alcoholic beverages or drugs or becomes incompetent to safely operate a motor vehicle or conduct classroom or behind-the-wheel instruction properly.

(3) The license was improperly or erroneously issued.

(4) The applicant or licensee fails to comply with the rules and regulations of TEA regarding the instruction of drivers in this state or fails to comply with any section of Texas Education Code, Chapter 1001.

(5) The instructor fails to follow procedures as prescribed in this chapter.

(6) The applicant or licensee has a personal driving record showing that the person has been the subject of driver improvement or corrective action as cited in Texas Transportation Code, Chapter 521, Subchapter N or O, during the past two years or that such action is needed to protect the students and motoring public.

(7) If an instructor or applicant has received deferred adjudication of guilt from a court of competent jurisdiction, a determination can be made upon satisfactory review of evidence that the conduct underlying the basis of the deferred adjudication has rendered the person unworthy to provide driver training instruction.

(8) The instructor uses any language, humor, gestures, advances, or innuendo that a reasonable and prudent individual would consider inappropriate.

§176.1108. Driving Safety Courses of Instruction.

(a) This section contains requirements for driving safety, continuing education, and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §176.1110 of this title (relating to Alternative Delivery Methods of Driving Safety Instruction) [~~paragraph (1)(I) of this subsection~~], all course content shall be delivered under the direct observation of a licensed instructor. Courses of instruction shall not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course shall be submitted by the course provider and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive as defined in §176.1101 of this title (relating to Definitions).

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses shall include, but not be limited to[~~:~~] promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

(B) Driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide a copy of the student verification of course completion document and/or enrollment contract, student instructional materials, final examination [~~exam~~], and evaluation in the proposed language accompanied by a statement from a translator with current credentials from the American Translators Association or the National Association of Judicial Interpreters and Translators [~~an accredited translator~~] that the materials are the same in both languages. In lieu of the specified credentials, a translator's credentials shall be presented to Texas Education Agency (TEA) for approval with the final determination based solely on TEA's interpretation. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's traffic safety goal and philosophy;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(I) progress standards that meet the requirements of subparagraph (F) of this paragraph;

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) if the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) any period of absence for any portion of instruction will require that the student complete that portion of instruction. All makeup [~~make-up~~] lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(V) conditions for dismissal and conditions for re-entry [~~reentry~~] of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students[~~,~~] such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources [~~,~~] such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course[~~,~~] and the furniture deemed necessary to accommodate the students in the course[~~,~~] such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics; however, the audio/video materials shall not be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials to be provided for use by each student as a guide to the course. The division may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in subparagraph (D) of this paragraph. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the division.

(C) Course and time management. Approved driving safety courses shall be presented in compliance with the following guidelines and shall include statistical information drawn from data maintained by the Texas Department of Transportation or National Highway Traffic Safety Administration.

(i) A minimum of 300 minutes of instruction is required.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination [~~exam~~] and summation.

(iv) Administrative procedures[~~,~~] such as enrollment[~~,~~] shall not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting shall allow a minimum of 30 minutes for lunch.

(vi) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided after the course introduction and prior to the last unit of the instructional day or the comprehensive examination [~~exam~~] and summation, whichever is appropriate.

(vii) The order of topics shall be approved by TEA [~~Texas Education Agency (TEA)~~] as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70% on the final examination.

(ix) In a traditional classroom setting, there must be sufficient seating for the number of students, arranged so that all students are able to view, hear, and comprehend all instructional aids and the class shall have no more than 50 students.

(x) The driving safety instructor or school shall make a material effort to establish the identity of the student.

(D) Minimum course content. Driving Safety course content, including video and multimedia, shall include current statistical data, references to law, driving procedures, and traffic safety methodology. A driving safety course shall include, as a minimum, materials adequate to assure the student masters the following.

(i) Course introduction--minimum of ten minutes (instructional objective--to orient students to the class). Instruction shall address the following topics:

(I) purpose and benefits of the course;

(II) course and facilities orientation;

(III) requirements for receiving course credit;

(IV) student course evaluation procedures; and

(V) TEA-provided information on course content.

(ii) The traffic safety problem--minimum of 15 minutes (instructional objectives--to develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution). Instruction shall address the following topics:

(I) identification of the overall traffic problem in the United States, Texas, and the locale where the course is being taught;

(II) death, injuries, and economic losses resulting from motor vehicle crashes in Texas; and

(III) the top five contributing factors [~~leading causes~~] of motor vehicle crashes in Texas as identified by the Texas Department of Transportation [~~Department of Public Safety (DPS)~~].

(iii) Factors influencing driver performance--minimum of 20 minutes (instructional objective--to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:

(I) attitudes, habits, feelings, and emotions (aggressive driving, etc.);

(II) alcohol and other drugs;

(III) physical condition (drowsy driving, etc.);

(IV) knowledge of driving laws and procedures; and

(V) understanding the driving task.

(iv) Traffic laws and procedures--minimum of 30 minutes (instructional objectives--to identify the requirements of, and the rationale for, applicable driving laws and procedures and to influence drivers to comply with the laws on a voluntary basis). Instruction shall address the following topics:

(I) passing;

(II) right-of-way;

(III) turns;

(IV) stops;

(V) speed limits;

(VI) railroad crossings safety, including statistics, causes, and evasive actions;

[~~(-a-)~~ ~~statistics;~~]
[~~(-b-)~~ ~~causes;~~ ~~and~~]
[~~(-c-)~~ ~~evasive~~ ~~actions;~~]

(VII) categories of traffic signs, signals, and highway markings;

(VIII) pedestrians;

(IX) improved shoulders;

(X) intersections;

(XI) occupant restraints;

(XII) anatomical gifts;

(XIII) litter prevention;

(XIV) law enforcement and emergency vehicles (this category will be temporary until the need is substantiated by documentation from the Department of Public Safety [~~DPS~~] on the number of deaths or injuries involved because of improper procedures used by a citizen when stopped by a law enforcement officer); and

(XV) other laws as applicable (i.e., financial responsibility/compulsory insurance).

(v) Special skills for difficult driving environments--minimum of 20 minutes (instructional objectives--to identify how special conditions affect driver and vehicle performance and identify techniques for management of these conditions). Instruction shall address the following topics:

(I) inclement weather;

(II) traffic congestion;

(III) city, urban, rural, and expressway environments;

(IV) reduced visibility conditions--hills, fog, curves, light conditions (darkness, glare, etc.), etc.; and

(V) roadway conditions.

(vi) Physical forces that influence driver control--minimum of 15 minutes (instructional objective--to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

(I) speed control (acceleration, deceleration, etc.);

(II) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and

(III) force of impact (momentum, kinetic energy, inertia, etc.).

(vii) Perceptual skills needed for driving--minimum of 20 minutes (instructional objective--to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:

(I) visual interpretations;

(II) hearing;

(III) touch;

(IV) smell;

(V) reaction abilities (simple and complex); and

(VI) judging speed and distance.

(viii) Defensive driving strategies--minimum of 40 minutes (instructional objective--to identify the concepts of defensive driving and demonstrate how they can be employed by drivers to reduce the likelihood of crashes, deaths, injuries, and economic losses). Instruction shall address the following topics:

(I) trip planning;

(II) evaluating the traffic environment;

(III) anticipating the actions of others;

(IV) decision making;

(V) implementing necessary maneuvers;

(VI) compensating for the mistakes of other drivers;

(VII) avoiding common driving errors; [~~and~~]

(VIII) interaction with other road users (motorcycles, bicycles, trucks, pedestrians, etc.); [~~.~~]

(IX) motorcycle awareness, including the dangers of failing to yield the right-of-way to a motorcyclist and the need to share the road with motorcyclist; and

(X) distractions relating to the effect of using a wireless communication device, including texting or engaging in other actions that may distract a driver from the safe or effective operation of a motor vehicle.

(ix) Driving emergencies--minimum of 40 minutes (instructional objective--to identify common driving emergencies and their countermeasures). Instruction shall address the following topics:

(I) collision traps (front, rear, and sides);

(II) off-road recovery, paths of least resistance; and

(III) mechanical malfunctions (tires, brakes, steering, power, lights, etc.).

(x) Occupant restraints and protective equipment--minimum of 15 minutes (instructional objective--to identify the ratio-

nale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:

(I) legal aspects;

(II) vehicle control;

(III) crash protection;

(IV) operational principles (active and passive);

(V) helmets and other protective equipment; and

(VI) dangers involved in locking or leaving children in vehicles unattended.

(xi) Alcohol and traffic safety--minimum of 40 minutes (instructional objective--to identify the effects of alcohol on roadway users). Instruction shall not address methods to drink and drive but shall address the following topics related to the effects of alcohol on roadway users:

(I) physiological effects;

(II) psychological effects;

(III) legal aspects; and

(IV) synergistic effects.

(xii) Comprehensive examination--minimum of five minutes (this shall be the last unit of instruction).

(xiii) The remaining 30 minutes of instruction shall be allocated to the topics included in the minimum course content or to additional driving safety topics that satisfy the educational objectives of the course.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved driving safety course described in the applicant's driving safety course content guide. Each course provider shall submit as part of the application an instructor training guide that is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 600 minutes of instruction of the course in a regular approved course under the observation of a licensed instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(VI) [~~(ii)(I)-(V)~~] of this subparagraph. The total time of the units shall contain a minimum of 24 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the driving safety course and the instructor training course. The comprehensive examination for each driving safety course must include at least 2 [~~two~~] questions from the required units set forth in subparagraph (D)(ii)-(xi) of this paragraph for a total of at least 20 questions. The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the final examination questions, but may facilitate alternative testing. Instructors may not be certified or students given credit for the driving safety course unless they score 70% or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70% on the final examination [~~exam~~]. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Student course evaluation. Each student in a driving safety course shall be given an opportunity to evaluate the course and the instructor on an official evaluation form. A master copy of the evaluation form will be provided to TEA.

(H) State-level evaluation of driving safety courses. Each course provider shall collect adequate student data to enable TEA to evaluate the overall effectiveness of a course in reducing the number of violations and accidents of persons who successfully complete the course. The commissioner of education may determine a level of effectiveness that serves the purposes of Texas Education Code (TEC), Chapter 1001.

(I) Requirements for authorship. The course materials shall be written by [~~a TEA-licensed driver training instructor or other~~] individuals or organizations with recognized experience in writing instructional materials [~~with input from a TEA-licensed driving safety instructor~~].

(J) Renewal of course approval. The course approval must be renewed every two years. The renewal document due date shall be March 1 of every even numbered calendar year [~~, 2006, and every two years thereafter~~].

(i) For approval, the course owner shall update all the methodology, procedures, statistical data, and references to law with the latest available data.

(ii) The course owner shall submit a Statement of Assurance stating that the course has been updated to reflect the latest applicable laws and statistics.

(iii) Failure to make necessary changes or to submit a Statement of Assurance documenting those changes shall be cause for revocation of the course approval.

(iv) The commissioner may alter the due date of the renewal documents by giving the approved course six months' notice. The commissioner may alter the due date in order to ensure that the course is updated six months after the effective date of new state laws passed by the Texas Legislature.

(2) Instructor development courses.

(A) If the alternative instructor training in §176.1107(c)(1) of this title (relating to Driving Safety Instructor License) is not applicable, driving safety instructors shall successfully complete 36 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the driving safety course to be taught, under the supervision of a driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 36 clock hours of training for driving safety instructors, excluding those clock hours approved by TEA staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include[~~:~~] the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the TEA-approved instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Driving safety instructor development courses may be offered at approved classroom facilities of a licensed school which is approved to offer the driving safety course being taught. A properly licensed instructor trainer shall present the course.

(E) Applicants shall complete 36 hours of training in the driving safety curriculum that shall be taught. Of the 36 hours, 24 shall cover techniques of instruction and in-depth familiarization with materials contained in the driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 24 hours have been completed.

(F) The driving safety course provider shall submit dates of instructor development course offerings for the 24-hour training that covers techniques of instruction and in-depth familiarization with the material contained in the driving safety curriculum, locations, class schedules, and scheduled instructor trainers' names and license numbers before the courses are offered. The 12-hour practical-teaching portion of the instructor development course shall be provided at properly licensed schools or classrooms approved to offer the course being provided.

(3) Continuing education courses.

(A) Continuing education requirements include the following.

(i) Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must attend the approved continuing education course conducted by the course provider.

(ii) The request for course approval shall contain the following:

(I) a description of the plan by which the course will be presented;

(II) the subject of each unit;

(III) the instructional objectives of each unit;

(IV) time to be dedicated to each unit;

(V) instructional resources for each unit, including names or titles of presenters and facilitators;

(VI) any information that TEA mandates to promote the quality of the education being provided; and

(VII) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course. [~~;~~ ~~and~~]

[~~(VIII)~~ ~~a course evaluation form to be completed by each instructor attending the course. The course provider must maintain each instructor's completed evaluation form for one year.~~]

(iii) A continuing education course may be approved if TEA determines that:

(I) the course is designed to enhance the instructional skills, methods, or knowledge of the driving safety instructor;

(II) the course pertains to subject matters that relate directly to driving safety instruction, instruction techniques, or driving safety-related subjects;

(III) the course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety instruction or driving safety-related subject matters. Evidence of the individuals' experience or expertise may be requested by the division; [~~and~~]

(IV) the course contains updates or approved revisions to the driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data; and [~~.~~]

(V) the division determines that any technology used to present a continuing education course meets reasonable standards for determining attendance, security, and testing.

(B) Course providers shall notify the division of the scheduled dates, times, and locations of all continuing education courses prior to the first day of class [~~being held~~].

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the division and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the division shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner [~~of education~~] determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(e) The commissioner [~~of education~~] may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances.

(1) Any information contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of TEC [~~Texas Education Code~~], Chapter 1001, and/or this chapter.

(4) The course has been found to be ineffective in meeting the educational objectives set forth in subsection (a)(1)(A) of this section.

§176.1109. Specialized Driving Safety Courses of Instruction.

(a) This section contains requirements for specialized driving safety courses, instructor development courses, and continuing education. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §176.1110 of this title (relating to Alternative Delivery Methods of Driving Safety Instruction), all course content shall be delivered under the direct observation of a specialized driving safety licensed instructor. Courses of instruction shall not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course shall be submitted and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive as defined in §176.1101 of this title (relating to Definitions).

(1) Specialized driving safety courses.

(A) Educational objectives. The educational objectives of specialized driving safety courses shall include, but not be limited to [:] improving the student's knowledge, compliance with, and attitude toward the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(B) Specialized driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide a copy of the student verification of course completion document and/or contract, student instructional materials, final examination [~~exam~~], and evaluation in the proposed language accompanied by a statement from a translator with current credentials from the American Translators Association or the National Association of Judicial Interpreters and Translators [~~an accredited translator~~] that the materials are the same in both languages. In lieu of the specified credentials, a translator's credentials may be presented to the Texas Education Agency (TEA) for approval with the final determination based solely on TEA's interpretation. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's goal and philosophy relative to occupant protection;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(I) progress standards that meet the requirements of subparagraph (F) of this paragraph;

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) appropriate criteria to determine course completion. If the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) provisions for the completion of makeup [~~make-up~~] work. Any period of absence for any portion of instruction will require that the student complete that portion of instruction. All makeup [~~make-up~~] lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(V) conditions for dismissal and conditions for re-entry [~~reentry~~] of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students[~~,~~] such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources [~~,~~] such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course[~~:~~] and the furniture deemed necessary to accommodate the students in the course[~~,~~] such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics; however, the audio/video materials shall not be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials provided for use by each student as a guide to the course. The division may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in subparagraph (D) of this paragraph. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the division.

(C) Course and time management. Approved specialized driving safety courses shall be presented in compliance with the following guidelines and shall include statistical information drawn from data maintained by the Texas Department of Transportation or National Highway Traffic Safety Administration.

(i) A minimum of 300 minutes of instruction is required of which at least 200 minutes shall address the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(iv) Administrative procedures[~~,~~] such as enrollment[~~,~~] shall not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting shall allow a minimum of 30 minutes for lunch.

(vi) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided after the course introduction and prior to the last unit of the instructional day or the comprehensive examination and summation, whichever is appropriate.

(vii) The order of topics shall be approved by TEA [~~Texas Education Agency (TEA)~~] as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70% on the final examination.

(ix) Specialized driving safety classrooms must have sufficient seating for the number of students, arranged so that all students are able to view, hear, and comprehend all instructional aids and the class shall have no more than 50 students.

(x) The specialized driving safety instructor or school shall make a material effort to establish the identity of the student.

(D) Minimum course content. A specialized driving safety course shall include, as a minimum, four hours of instruction that encourages the use of child passenger safety seat systems and the wearing of seat belts, etc., and materials adequate to assure the student masters the following.

(i) Course introduction--minimum of ten minutes (instructional objective--to orient students to the class). Instruction shall address the following topics:

(I) purpose and benefits of the course;

(II) course and facilities orientation;

(III) requirements for receiving course credit; and

(IV) student course evaluation procedures.

(ii) The occupant protection problem--minimum of 15 minutes (instructional objectives--to develop an understanding of Texas occupant protection laws and the national and state goals regarding occupant protection). Instruction shall address the following topics:

(I) identification of Texas Occupant Protection Laws;

(II) deaths, injuries, and economic losses related to improper use of occupant restraint systems; and

(III) national and state goals regarding occupant protection.

(iii) Factors influencing driver performance--(instructional objective--to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:

(I) attitudes, habits, feelings, and emotions;

(II) alcohol and other drugs;

(III) physical condition;

(IV) knowledge of driving laws and procedures; and

(V) understanding the driving task.

(iv) Physical forces that influence driver control--(instructional objective--to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

(I) speed control (acceleration, deceleration, etc.);

(II) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and

(III) force of impact (momentum, kinetic energy, inertia, etc.).

(v) Perceptual skills needed for driving--(instructional objective--to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:

(I) visual interpretations;

(II) hearing;

(III) touch;

(IV) smell;

(V) reaction abilities (simple and complex); and

(VI) judging speed and distance.

(vi) Occupant protection equipment--minimum of 25 minutes (instructional objective--to identify the improvements and technological advances in automotive design and construction). Instruction shall address the following topics:

(I) anti-lock brakes;

(II) traction control devices;

(III) suspension control devices;

(IV) electronic stability/active handling systems;

(V) crumple zones;

(VI) door latch improvements;

(VII) tempered or safety glass;

(VIII) headlights; and

(IX) visibility enhancements.

(vii) Occupant restraint systems--minimum of 40 minutes (instructional objective--to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:

(I) safety belts, airbags, and other protective equipment;

(II) proper usage and necessary precautions;

(III) vehicle control and driver stability;

(IV) crash dynamics and protection; and

(V) operational principles (active versus passive).

(viii) Child passenger safety--minimum of 120 minutes (instructional objective--to understand the child passenger safety law in Texas; the importance of child safety seats; and the risks to children that are unrestrained or not properly restrained). Instruction shall address the following topics:

(I) misconceptions or mistaken ideas regarding child passenger safety;

(II) purpose of child safety seats;

(III) how to secure the child properly and factors to consider;

(IV) child safety seat types and parts;

(V) precautions regarding child safety seats;

(VI) correct installation of a child safety restraint system;

(VII) tips regarding child safety restraint systems; and

(VIII) dangers involved in locking or leaving children in vehicles unattended.

(ix) Comprehensive examination--minimum of five minutes (this shall be the last unit of instruction).

(x) The remaining 30 minutes of instruction shall be allocated to the topics included in the minimum course content or to additional occupant protection topics that satisfy the educational objectives of the course.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved specialized driving safety course described in the applicant's specialized driving safety course content guide. Each course provider shall submit as part of the application an instructor training guide that is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 600 minutes of instruction of the course in a regular approved course under the observation of a licensed specialized driving safety instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(VI) ~~[(ii)(I)-(V)]~~ of this subparagraph. The total time of the units shall contain a minimum of 24 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the specialized driving safety course and the instructor training course. The comprehensive examination for each specialized driving safety course must include at least two questions from each unit, excluding the course introduction and comprehensive examination units. The final examina-

tion questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the final examination questions unless alternative testing is required. Instructors may not be certified or students given credit for the specialized driving safety course unless they score 70% or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70% on the final examination [~~exam~~]. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Student course evaluation. Each student in a specialized driving safety course shall be given an opportunity to evaluate the course and the instructor on an official evaluation form. A master copy of the evaluation form will be provided to TEA.

(H) State-level evaluation of specialized driving safety courses. Each course provider shall collect adequate student data to enable TEA to evaluate the overall effectiveness of a course in reducing the number of violations and accidents of persons who successfully complete the course. The commissioner of education may determine a level of effectiveness that serves the purposes of TEC [~~Texas Education Code~~], Chapter 1001.

(I) Requirements for authorship. The course shall be authored by an individual [~~a TEA-licensed driver training instructor~~] who possesses a current or past National Highway Traffic Safety Association Child Passenger Safety technician or instructor certificate.

(2) Specialized driving safety instructor development courses.

(A) If the alternative instructor training in §176.1107(c)(2) of this title (relating to Driving Safety Instructor License) is not applicable, specialized driving safety instructors shall successfully complete 36 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the specialized driving safety course to be taught, under the supervision of a specialized driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 36 clock hours of training for the instructors, excluding those clock hours approved by TEA staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include[~~:~~] the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the TEA-approved specialized driving safety instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Specialized driving safety instructor development courses may be offered at approved classroom facilities of a licensed school which is approved to offer the specialized course being taught. A properly licensed instructor trainer shall present the course.

(E) Applicants shall complete 36 hours of training in the specialized driving safety curriculum that shall be taught. Of the 36 hours, 24 hours shall cover techniques of instruction and in-depth familiarization with materials contained in the specialized driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 24 hours have been completed.

(F) The course provider shall submit dates of instructor development course offerings for the 24-hour training that covers techniques of instruction and in-depth familiarization with the material contained in the specialized driving safety curriculum, locations, class schedules, and scheduled instructor trainers' names and license numbers before the courses are offered. The 12-hour practical-teaching portion of the instructor development course shall be provided at properly licensed schools or classrooms approved to offer the course being provided.

(3) Continuing education courses.

(A) Continuing education requirements include the following.

(i) Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must attend the approved continuing education course conducted by the course provider.

(ii) The request for course approval shall contain the following:

(I) a description of the plan by which the course will be presented;

(II) the subject of each unit;

(III) the instructional objectives of each unit;

(IV) time to be dedicated to each unit;

(V) instructional resources for each unit, including names or titles of presenters and facilitators;

(VI) any information that TEA mandates to ensure quality of the education being provided; and

(VII) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course. [~~; and~~]

[~~(VIII)~~ ~~a course evaluation form to be completed by each instructor attending the course. The course provider must maintain each instructor's completed evaluation form for one year.~~]

(iii) A continuing education course may be approved if TEA determines that:

(I) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of the specialized driving safety instructor;

(II) the course pertains to subject matters that relate directly to driving safety or specialized driving safety instruction, instruction techniques, or driving safety-related subjects;

(III) the entire course has been designed, planned, and organized by the course provider. The course provider

shall use licensed driving safety or specialized driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety or specialized driving safety instruction or driving safety-related subject matters. Evidence of the individuals' experience or expertise may be requested by the division; [~~and~~]

(IV) the course contains updates or approved revisions to the specialized driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data; and [~~.~~]

(V) the division determines that any technology used to present a continuing education course meets reasonable standards for determining attendance, security, and testing.

(B) Course providers shall notify the division of the scheduled dates, times, and locations of all continuing education courses prior to the first day of class.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the division and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the division shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner [~~of education~~] determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(e) The commissioner [~~of education~~] may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances.

(1) Any information contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of TEC [~~Texas Education Code~~], Chapter 1001, and/or this chapter.

(4) The course has been found to be ineffective in meeting the educational objectives set forth in subsection (a)(1)(A) of this section.

§176.1110. Alternative Delivery Methods of Driving Safety Instruction.

(a) Approval process. The commissioner of education may approve an alternative delivery method (ADM) that delivers an approved driving safety course or an approved specialized driving course and meets the following requirements.

(1) Standards for approval. The commissioner [~~of education~~] may approve an ADM for an approved driving safety course or a specialized driving safety course and waive any rules to accomplish this approval if the ADM delivers an approved course in a manner that is at least as secure as a traditional classroom. ADMs that meet the requirements outlined in subsections (b)-(h) of this section shall receive ADM approval.

(2) Application. The course provider shall submit a completed ADM application along with the appropriate fee. The application for ADM approval shall be treated the same as an application for the approval of a new course and the ADM must deliver the course provider's approved curriculum as delineated in the course content guide required by §176.1108(a)(1)(B) of this title (relating to Driving Safety Courses of Instruction) and §176.1109(a)(1)(B) of this title (relating to Specialized Driving Safety Courses of Instruction).

(3) Incomplete applications. An application that is incomplete may be returned to the applicant along with the application fee.

(4) School license required. A person or entity offering a driving safety course or a specialized driving course to Texas students by an alternative delivery method must hold a driving safety school license. The driving safety school is responsible for the operation of the ADM.

(5) Course provider endorsement required. The driving safety school must have an endorsement from a licensed course provider.

(b) Course content. The ADM must deliver the same topics and course content as the approved course.

(1) Course topics. The time requirements for each unit and the course as a whole described in §176.1108(a)(1)(C) and (D) [~~of this title~~] and §176.1109(a)(1)(C) and (D) of this title [~~(relating to Specialized Driving Safety Courses of Instruction)~~] shall be met.

(2) Topic sequence. The ADM sequencing may be different from the approved traditional course as long as the sequencing does not detract from educational value of the course. The ADM owner shall provide a key showing the topic sequence of the traditional course and where the corresponding information appears in the ADM.

(3) Editing. The material presented in the ADM shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(4) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the course.

(5) Minimum content. The ADM shall present sufficient content so that it would take a student 300 minutes to complete the course. In order to demonstrate that the ADM contains sufficient content, the ADM shall use the following methods.

(A) Word count. For written material that is read by the student, the course provider shall count the total number of words in the written sections of the course. This word count shall be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. For multimedia presentation, the course provider shall calculate the total amount of time it takes for all multimedia presentations to play.

(C) Charts and graphs. The ADM may assign one minute for each chart or graph.

(D) Examinations. The course provider may allocate up to 90 seconds for questions presented over the Internet and 30 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 300 minutes, the ADM has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the ADM may submit alternate methodology to demonstrate that the ADM meets the 300-minute requirement.

(6) Student breaks. A course that demonstrates that it contains 300 minutes of instructional content shall mandate that students take 60 minutes of break time or provide additional educational content for a total of 360 minutes.

(c) Personal validation. The ADM shall maintain a system to validate the identity of the person taking the course. The personal validation system shall incorporate the following requirements.

(1) Personal validation questions. The ADM shall ask a minimum of 10 personal validation questions throughout the course.

(2) Third party data sources. The personal validation questions shall be drawn equally from at least two different databases.

(3) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 30 seconds for questions presented by telephone.

(4) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the final examination.

(5) Exclusion from the course. The ADM shall exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(6) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons that the school corrected the answer.

(7) Student affidavits. A student for whom third-party database information is available from fewer than two databases (for example, a student with an out-of-state driver's license) may be issued a uniform certificate of completion upon presentation to the course provider of a notarized copy of the student's driver's license or equivalent type of photo identification and a statement from the student certifying that the individual attended and successfully completed the six-hour driving safety or specialized driving safety course for which the certificate is being issued and for which there exists a corresponding student record.

(8) Alternative methods. Upon approval by the Texas Education Agency (TEA), the ADM may use alternate methods that are at least as secure as the personal validation question method.

(d) Content validation. The ADM shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) Timers. The ADM shall include built-in timers to ensure that 300 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The ADM shall ask at least 1 [~~one~~] course validation question following each multimedia clip of more than 60 seconds.

(A) Test bank. For each multimedia presentation that exceeds 60 seconds, the ADM shall have a test bank of at least 4 [~~four~~] questions.

(B) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the ADM shall either require the student view the multimedia clip again or the ADM shall fail the student from the course. If the ADM requires the student to view the multimedia clip again, the ADM shall present a different question from its test bank for that multimedia clip. The ADM may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The ADM shall not identify the correct answer to the multimedia question.

(3) Mastery of course content. The ADM shall test the student's mastery of the course content by asking at least two questions from each of the [~~ten~~] topics listed in §176.1108(a)(1)(D)(ii)-(xi) and §176.1109(a)(1)(D)(ii)-(viii) [~~§176.1108(a)(1)(D)~~] of this title.

(A) Test bank. The test bank for course content mastery questions shall include at least ten questions from each of the [~~ten~~] topics identified in §176.1108(a)(1)(D)(ii)-(xi) and §176.1109(a)(1)(D)(ii)-(viii) [~~§176.1108(a)(1)(D)~~] of this title.

(B) Placement of questions. The mastery of course content questions shall be asked either at the end of the major unit or section in which the topic identified in §176.1108(a)(1)(D)(ii)-(xi) and §176.1109(a)(1)(D)(ii)-(viii) [~~§176.1108(a)(1)(D)~~] of this title is covered (unit examination) or at the end of the course (comprehensive final examination).

(C) Question difficulty. Course content mastery questions shall be short answer, multiple choice, essay, or a combination of these forms, and of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Repeat and retest [~~re-test~~] options. The ADM may use either of the following options for students who fail an examination to show mastery of course content, but may not use both in the same ADM.

(A) Repeat the failed unit. If the student misses more than 30% of the questions asked on an examination, the ADM shall require that the student [~~go back and~~] take the unit again. All timers shall be reset. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the unit, the ADM shall again test the student's mastery of the material. The ADM shall present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Retest [~~Re-test~~] the student. If the student misses more than 30% of the questions asked on an examination [~~exam~~], the ADM shall retest the student in the same manner as the failed examination, using different questions from its test bank. The student is not required to repeat the failed unit, but may be allowed to do so prior to retaking the examination [~~exam~~]. If the student fails the same unit examination or the comprehensive final examination three times, the student shall fail the course.

(e) Student records. The ADM shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. Each entry that verifies enrollment, identifies the question asked or the response given, documents retesting and/or revalidation, and documents any changes to the student's record shall include the date and time of the activity reported. The student records shall contain the following information.

(1) The student's name and driver's license number.

(2) A record of which personal validation questions were asked and the student's responses.

(3) A record of which multimedia participation questions were asked and the student's responses.

(4) The name or identity number of the staff member entering comments, retesting, or revalidating the student.

(5) If any answer to a question is changed by the school or course provider for a student who inadvertently missed a question, the school or course provider shall provide both answers and a reasonable explanation for the change.

(6) A record of the course content mastery questions asked and the answers given.

(7) A record of the time the student spent in each unit of the ADM and the total instructional time the student spent in the course.

(8) The school shall also ensure that the student record is readily, securely, and reliably available for inspection by TEA or a TEA-authorized representative.

(f) Additional requirements for Internet courses. Courses delivered via the Internet shall also comply with the following requirements.

(1) Re-entry into the course. An ADM may allow the student re-entry into the course by username and password authentication or other means that are as secure as username and password authentication.

(2) Navigation. The student shall be able to logically navigate through the course. The student shall be allowed to freely browse previously completed material.

(3) Audio-visual standards. The video and audio shall be clear and, when applicable, the video and audio shall be synchronized.

(4) Video transcripts. If the ADM presents transcripts of a video presentation, the transcript shall be delivered concurrently with the video stream so that the transcript cannot be displayed if the video does not display on the student's computer.

(5) Domain names. Each school offering an ADM must offer that ADM from a single domain. The ADM may accept students that are redirected to the ADM's domain, as long as the student is redirected to a webpage [~~web page~~] that clearly identifies the course provider and school offering the ADM before the student begins the registration process, supplies any information, or pays for the course. Subdomains of the ADM's single domain may also accept students as long as the subdomain is registered to and hosted by the ADM and clearly identifies the official course provider, school name, and TEA registration number.

(6) Course identification. All ADMs presented over the Internet shall display the school name and school number assigned by TEA as well as the course provider name and course provider number assigned by TEA on the entity's homepage and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(g) Additional requirements for video courses.

(1) Delivery of the material. For ADMs delivered by the use of videotape, digital video disc (DVD), film, or similar media, the equipment and course materials may only be made available through a process that is approved by TEA.

(2) Video requirement. In order to meet the video requirement of §176.1108(a)(1)(B)(v) of this title, the video course shall [~~may~~] include between 60 and 150 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 300 minutes of required instruction shall be video material that is relevant to 1 [~~one~~] of the 11 required topics and produced by the ADM owner, course owner, or course provider specifically for the ADM.

(A) A video ADM shall ask, at a minimum, at least 1 [~~one~~] course validation question for each multimedia clip of more than 60 seconds at the end of each major segment (chapter) of the ADM.

(B) A video ADM shall devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 60 seconds presented during the ADM.

(h) Standards for ADMs using new technology. For ADMs delivered using technologies that have not been previously reviewed and approved by TEA, TEA may apply similar standards as appropriate and may also require additional standards. These standards shall be designed to ensure that the course can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(i) Modifications to the ADM. Except as provided by paragraph (1) of this subsection, a change to a previously approved ADM shall not be made without the prior approval of TEA. The licensed course provider for the approved course on which the ADM is based shall ensure that any modification to the ADM is implemented by all schools endorsed to offer the ADM.

(1) A course provider may submit to the TEA a request for immediate implementation of a proposed change that is insignificant or that protects the interest of the consumer such that immediate implementation is warranted. The request shall include:

(A) a complete description of the proposed change;

(B) the reason for the change;

(C) the reason the requestor believes the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted; and

(D) an explanation of how the change will maintain the course or ADM in compliance with state law and the rules specified in this chapter.

(2) The TEA may request additional information regarding a proposed change from the course provider making a request under paragraph (1) of this subsection.

(3) The TEA will respond to any request made under paragraph (1) of this subsection within five working days of receipt.

(A) If the TEA determines that the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted, the requestor may immediately im-

plement the change. The licensed course provider for the approved course on which the ADM is based shall ensure that the change is implemented by all schools endorsed to offer the ADM.

(B) If the TEA determines that the proposed change is neither insignificant nor protects the interest of the consumer such that immediate implementation is warranted, the TEA shall notify the requestor of that determination and the change may not be made unless the TEA approves the change following a complete review.

(4) A determination by the TEA to allow immediate implementation under paragraph (1) of this subsection does not constitute final approval by the TEA of the change. The TEA reserves the right to conduct further review after the change is implemented and to grant or deny final approval based on whether the change complies with state law and rules specified in this chapter.

(5) If, following further review, a change in an ADM that has been immediately implemented pursuant to paragraph (1) of this subsection is determined not to be in compliance with state law and rules specified in this chapter, the TEA:

(A) shall notify the course provider affected by the change of:

(i) the specific provisions of state law or rules with which the ADM change is not in compliance; and

(ii) a reasonable date by which the ADM must be brought into compliance;

(B) shall require the course provider to notify any school endorsed by the course provider of the finding;

(C) shall not, for the period between the implementation of the change and the date specified under subparagraph (A)(ii) of this paragraph:

(i) seek any penalty relating to the non-compliance;

(ii) take any action to revoke or deny renewal of a license of a school or course provider based on the change; or

(iii) withdraw approval of a course or ADM based on the change; and

(D) is not required to specify the method or manner by which the course provider alters the ADM to come into compliance with state law and the rules in this chapter.

(6) If the TEA allows immediate implementation pursuant to paragraph (1) of this subsection and later determines that the description of the change or the request was misleading, materially inaccurate, not substantially complete, or not made in good faith, paragraph (5)(C) of this subsection does not apply.

(7) A course provider who immediately implements a change pursuant to paragraph (1) of this subsection and fails to bring the ADM into compliance prior to the date allowed under paragraph (5)(A)(ii) of this subsection may be determined to be in violation of state law or the rules in this chapter after that date.

(8) A course provider that immediately implements a change under paragraph (1) of this subsection assumes the risk of final approval being denied and of being required to come into compliance with state law and the rules in this chapter [~~Chapter 176~~] prior to the date allowed under paragraph (5)(A)(ii) of this subsection, including bearing the cost of reversing the change or otherwise modifying the ADM to come into compliance with state law and the rules in this chapter.

(j) Termination of the school's operation. Upon termination, schools shall deliver any missing student data to TEA within five days of termination.

(k) Renewal of ADM approval. The ADM approval must be renewed every two years. The renewal document due date shall be March 1 of every even numbered calendar year [~~, 2006, and every two years thereafter~~].

(1) For approval, the course provider shall:

(A) update all the statistical data and references to law with the latest available data; and

(B) submit a statement of assurance [~~saying~~] that the ADM has been updated to reflect the latest applicable laws and statistics.

(2) Failure to make necessary changes or to submit a statement of assurance documenting those changes shall be cause for revocation of the ADM approval.

(3) The commissioner may alter the due date of the renewal documents by giving the approved ADM six months' notice. The commissioner may alter the due date in order to ensure that the ADM is updated six months after the effective date of new state laws passed by the Texas Legislature.

(l) Access to instructor. With the exception of circumstances beyond the control of the school, the student shall have adequate access (on the average, within two minutes) to both a licensed instructor and telephonic technical assistance (help desk) throughout the course such that the flow of instructional information is not delayed.

§176.1113. Facilities and Equipment.

(a) No classroom facility shall be located in a private residence.

(b) The classroom facilities, when used for instruction, shall contain at least the following:

(1) adequate seating facilities for all students being trained;

(2) adequate charts, diagrams, mock-ups, and pictures relating to the operation of motor vehicles, traffic laws, physical forces, and correct driving procedures; and

(3) any materials that have been approved as a part of the course approval.

(c) The amount of classroom space shall meet the use requirements of the maximum number of current students in class with appropriate seating facilities as necessitated by the activity patterns of the course.

(d) Each school and classroom shall conduct the Texas Education Agency-approved driving safety or specialized driving safety course in a facility that promotes the purpose and objectives as set forth in this chapter. The driving safety or specialized driving safety course shall be provided in designated instructional areas that promote learning by ensuring that students are able to see and hear the instructor and audiovisual aids. Any facility that contains an adult-oriented business or a facility that is required to exclude patrons because of age will not be approved. Factors that will be considered in determining whether facilities promote learning include facility layout, visual and hearing distractions, and equipment functionality.

(e) Enrollment shall not exceed the design characteristics of the student workstations. The facilities shall meet any state and local ordinances governing housing and safety for the use designated.

(f) A violation of the law or rules by any multiple classroom location constitutes a violation by the driving safety school.

(g) All classroom approvals are contingent on the driving safety school license and shall be subject to denial or revocation if such action is taken against the license of the driving safety school that has responsibility for the classroom location.

(h) Course provider facilities shall be staffed in such a manner that an employee of the course provider is available to answer questions and take messages during regular business hours.

(i) The course provider location shall be the physical address as stated on the course provider license.

§176.1114. Student Complaints.

(a) The course provider shall have a written grievance procedure approved by the division director that is disclosed to all students. Driving safety schools shall follow the procedures approved for the course provider. The function of the procedure shall be to attempt to resolve disputes between students, including terminations and graduates, and the school. Adequate records shall be maintained.

(b) The driving safety school or course provider shall make every effort to resolve complaints.

(c) Each uniform certificate of course completion shall contain Texas Education Agency complaint contact information.

§176.1117. Uniform Certificate of Course Completion for Driving Safety or Specialized Driving Safety Course.

(a) Course provider responsibilities. Course providers shall be responsible for original and duplicate uniform certificates of course completion in accordance with this subsection.

(1) The course provider of a driving safety or specialized driving safety course shall ensure that each instructor completes the verification of course completion document approved by the Texas Education Agency (TEA). The verification of course completion document shall contain a statement to be signed by the instructor that states: "Under penalty of law, I attest to the fact that the student whose name and signature appear [~~appears~~] on this document has successfully completed the number of hours as required under Texas Education Code, Chapter 1001, and that any false information on this document will be used as evidence in a court of law and/or administrative proceeding." This verification of course completion document shall be returned to the course provider upon completion of each driving safety class and maintained for no less than three years.

(2) The course provider shall implement and maintain a policy which effectively ensures protective measures are in use at all times for securing original and duplicate uniform certificates of course completion and course completion certificate numbers. The records and unissued or unnumbered original and duplicate uniform certificates of course completion shall be readily available for review by representatives of TEA.

(3) The course provider shall maintain electronic files with data pertaining to all course completion certificate numbers purchased from TEA. The course provider shall make available to TEA upon request an ascending numerical accounting record of the numbered uniform certificates of completion issued. The course provider shall ensure security of the data.

(4) The course provider shall ensure that effective measures are taken to preclude lost data and that a system is in place to recreate electronic data for all certificate numbers, whether used or not used, and all certificates that have been issued.

(5) Course providers shall issue and mail uniform certificates of course completion only to students who have successfully completed all elements of the course provider's approved driving safety or specialized driving safety course taught by TEA-licensed instructors in TEA-approved locations as indicated on the verification of course completion document or student footprint.

[~~(6) The course provider must keep all parts of all voided original and duplicate uniform certificates of course completion for a period of three years.~~]

(6) [~~(7)~~] Course providers shall ensure that adequate training is provided regarding course provider policies and updates on course provider policies to all driving safety schools and instructors offering their approved driving safety or specialized driving safety course.

(7) [~~(8)~~] Course providers shall report all unaccounted original and duplicate course completion certificate numbers or unissued certificates or duplicates to the division within five business days of the discovery of the incident. In addition, the course provider shall be responsible for conducting an investigation to determine the circumstances surrounding the unaccounted items. A report of the findings of the investigation, including preventative measures for recurrence, shall be submitted for approval to the division within 30 days of the discovery.

(8) [~~(9)~~] Each unaccounted or missing original or duplicate course completion certificate number or blank or unissued original or duplicate uniform certificate of completion may be considered a separate violation within the meaning of Texas Education Code (TEC), §1001.553. This may include lost, stolen, or otherwise unaccounted original or duplicate course completion certificate number or blank or unissued original or duplicate uniform certificates of course completion.

(9) [~~(10)~~] Course providers shall mail all original and duplicate uniform certificates of course completion using first-class or enhanced postage or an equivalent commercial delivery method.

(10) [~~(11)~~] Course providers shall not transfer course completion certificate numbers to a course other than the course for which the certificates were ordered from TEA.

(11) [~~(12)~~] No course provider or employee shall complete, issue, or validate a uniform certificate of course completion to a person who has not successfully completed all elements of the entire course as verified by a TEA-licensed instructor.

(12) [~~(13)~~] No course provider or employee shall issue, mail, transfer, or transmit an original or duplicate uniform certificate of course completion bearing the serial number of a certificate or duplicate previously issued.

(13) [~~(14)~~] Course providers shall sequentially number original uniform certificates of course completion from the block of numbers purchased from the division [~~for the purpose specified in paragraph (13) of this subsection~~].

(14) [~~(15)~~] When a duplicate uniform certificate of course completion is issued by a course provider, the duplicate certificate shall bear a serial number from the block of numbers purchased from the division by the course provider. The duplicate certificate of course completion shall clearly indicate the number of both the duplicate and the original serial number of the certificate being replaced.

(15) [~~(16)~~] Any item on a duplicate uniform certificate of course completion that has different data than that shown on the original certificate must clearly indicate both the original data and the replacement data; for example, a change in the date of course completion

must show the correct date and "changed from XX," where "XX" is the date shown on the original uniform certificate of course completion.

(16) [~~(17)~~] The fee for a duplicate uniform certificate of course completion is $10. If the student requests a duplicate within 30 days of the date of issue of the original certificate because the original was not received or was damaged so as to be unusable or was issued with errors due to no fault of the student, the course provider shall issue the duplicate at no cost to the student. Course providers shall ensure that schools endorsed to offer the approved course are aware of this rule and shall include this information in the student enrollment contract.

(17) [~~(18)~~] Course providers shall implement and maintain methods for efficiently issuing and mailing original uniform certificates of course completion so that issuance of duplicate certificates is kept at a minimal rate. A ratio of duplicates to originals that would indicate to a reasonable and prudent person that the course provider has failed to minimize duplicates constitutes evidence that a violation of TEC [~~Texas Education Code~~], §1001.056(c-1), exists and shall be sufficient to initiate proceedings to sanction or condition the license of the course provider in question.

(b) School owner responsibilities. In order to prevent misuse of uniform certificates of course completion, driving safety school owners shall ensure that:

(1) the course provider policies are followed and communicated to all instructors and employees of the school; and

(2) all records are returned to the course provider in a timely manner as set forth by the course provider.

(c) Instructor responsibilities. In order to prevent misuse of uniform certificates of course completion, driving safety and specialized driving safety instructors shall ensure that:

(1) all records are returned to the driving safety school to be forwarded to the course provider within the time allowed by course provider policy;

(2) the verification of course completion document provided by the course provider is signed by the instructor who conducted the class upon completion of the class;

(3) the entire course is completed prior to signing the verification of course completion document;

(4) the court information is obtained from each student taking the driving safety or specialized driving safety class for the purposes of Texas Code of Criminal Procedure, Article 45.051 and 45.0511. Students who want an insurance reduction only shall have "insurance only" indicated in the court information area on the verification of course completion document provided to the course provider; and

(5) the instructor adheres to the school and course provider policies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005299

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.13, 153.15, 153.17

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §§153.13, 153.15, and 153.17. Amendments to these sections were originally proposed in the June 11, 2010, issue of the *Texas Register* (35 TexReg 4835) and were withdrawn in the September 17, 2010, issue of the *Texas Register* (35 TexReg 8493). The proposed amendments result from the Board's rule review process and reflect both substantive and non-substantive changes.

Proposed amendments to §153.13, Educational Requirements, eliminate provisions regarding changes that became effective on November 1, 2007, as all applicants are now subject to the new requirements, and clarify the Appraisal Qualifications Board (AQB) requirements regarding distance education courses. The proposed amendments also provide for current certified appraisers in good standing in other states to satisfy their education requirements for the same level of certification in Texas by virtue of the out-of-state certification. The amendments also introduce non-substantive changes to the section.

Proposed amendments to §153.15, Experience Required for Certification or Licensing, implement the federal requirement that the board audit the experience of 100% of applicants for certification. The proposed amendments also provide for current certified appraisers in good standing in other states to satisfy their experience requirements for the same level of certification in Texas by virtue of the out-of-state certification. The proposed amendments further clarify the experience audit process.

Proposed amendments to §153.17, Renewal or Extension of Certification and License or Renewal of Trainee Approval, consolidate the general renewal requirements into a new subsection (a) and clarify that a renewal is timely if it is complete and mailed or filed online by the expiration date. Further, the proposed amendments modify the process for reporting continuing education to the board, discontinuing the self-reporting system validated through random audits and instead requiring the licensee to complete an appraiser continuing education report form and submit certificates of course completion. The proposed amendments also clarify the process for reapplying for a license after expiration and make other non-substantive changes to improve readability.

Devon V. Bijansky, General Counsel, has determined that for the first five-year period the proposed amendments are in ef-

fect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on individuals, small businesses or micro-businesses as a result of implementing the amendments.

Ms. Bijansky has also determined that the anticipated public benefit as a result of these amendments is greater efficiency, clarity, and consistency in TALCB's licensing processes, as well as an enhanced ability to track licensees' continuing education.

Comments on the proposed amendments may be submitted to Devon V. Bijansky, General Counsel, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Occupations Code, §1103.151, Rules Relating to Certificates and Licenses.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§153.13. Educational Requirements.

(a) Applicants for certification, licensure, or approval as a trainee must meet all educational requirements set forth by the Appraiser Qualifications Board. [~~General Real Estate Appraiser Certification.~~]

[~~(1) Applicants for General Real Estate Appraiser Certification whose application is received by the board prior to November 1, 2007 must have successfully completed 180 classroom hours in courses which meet the requirements as set out in subsections (e) - (o) of this section. Of these 180 classroom hours at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application. At least 30 classroom hours of the fundamental real estate appraisal course requirements must be in courses with emphasis on the appraisal of non-residential properties.~~]

[~~(2) Applicants for General Real Estate Appraiser Certification whose application is received by the board after October 31, 2007 shall meet all educational requirements set forth by the Appraiser Qualifications Board.~~]

(b) Education by endorsement: An applicant for certification who is currently licensed and in good standing in a state that has not been disapproved by the Appraisal Subcommittee is deemed to satisfy the education requirements for the same level of certification in Texas. The applicant shall provide appropriate documentation as required by the board.

[~~(b) Residential Real Estate Appraiser Certification.~~]

[~~(1) Applicants for Residential Real Estate Appraiser Certification whose application is received by the board prior to November 1, 2007 must have successfully completed 120 classroom hours in courses which meet the requirements as set out in subsections (e) - (o) of this section. Of these 120 classroom hours at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application.~~]

[~~(2) Applicants for Residential Real Estate Appraiser Certification whose application is received by the board after October 31, 2007 shall meet all educational requirements set forth by the Appraiser Qualifications Board.~~]

[~~(c) Real Estate Appraiser License or Provisional License.~~]

[~~(1) Applicants for a Real Estate Appraiser License or Provisional License whose application is received by the board prior to November 1, 2007 must have successfully completed 90 classroom hours which meet the requirements as set out in subsections (e) - (o) of this section. Of these 90 classroom hours at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application.~~]

[~~(2) Applicants for Real Estate Appraiser License or Provisional License whose application is received by the board after October 31, 2007 shall meet all educational requirements set forth by the Appraiser Qualifications Board.~~]

[~~(d) Appraiser Trainee. Effective with all applications received by the board after February 28, 2006, an applicant for an authorization as an Appraiser Trainee must meet all educational requirements set forth in the guidelines recommended by the Appraiser Qualifications Board.~~]

(c) [~~(e)~~] The board may accept a course of study to satisfy educational requirements for certification or licensing established by the Act or by this section if the board has approved the course and determined it to be a course related to real estate appraisal.

(d) [~~(f)~~] The board shall [~~may~~] approve courses [~~submitted or to be submitted by applicants~~] for appraiser certification upon a determination of the board that:

(1) the subject matter of the course was appraisal related;

(2) the course was offered by an accredited college or university, or the course was approved by the Appraiser Qualifications Board under its course approval process as a qualifying education course;

(3) the applicant obtained credit received in a classroom presentation the hours of instruction for which credit was given and successfully completed a final examination for course credit except as specified in subsection (i) [~~(k)~~] of this section (relating to distance education); and

(4) the course was at least 15 classroom hours in duration, which includes time devoted to examinations which are considered to be part of the course.

(e) [~~(g)~~] The board may require an applicant to furnish materials such as course outlines, syllabi, course descriptions or official transcripts to verify course content or credit.

(f) [~~(h)~~] Course providers may obtain prior approval of a course by filing forms prescribed by the board and submitting a letter indicating that the course has been approved by the Appraiser Qualifications Board under its course approval process. Such prior approval of courses will remain in effect for a period commensurate with the period of the approval granted by the Appraiser Qualifications Board.

(g) [~~(i)~~] The board shall accept classroom hour units of instruction as shown on the transcript or other document evidencing course credit if the transcript reflects the actual hours of instruction the student received. Fifteen classroom hours of credit may be awarded for one semester hour of credit from an acceptable provider. Ten classroom hours of credit may be awarded for one quarter hour of credit from an acceptable provider. Ten classroom hours of credit may be awarded for each continuing education credit from an acceptable provider. The board may not accept courses repeated within three years of the original offering unless the subject matter has changed significantly.

(h) [~~(j)~~] Instructors who are also certified or licensed appraisers may receive continuing education credit consistent with the criteria

adopted by the Appraiser Qualifications Board. Credit for instructing any given course or seminar can only be awarded once during a continuing education cycle.

(i) [~~(k)~~] Distance education courses may be acceptable to meet the classroom hour requirement, or its equivalent, provided that the course is approved by the board, that a minimum time equal to the number of hours of credit elapses from the date of course enrollment until its completion, and that the course meets the criteria [~~one of the following conditions~~] listed in paragraph [~~paragraphs~~] (1) or (2) [~~- (3)~~] of this subsection.

(1) The [~~the~~] course must have been presented by an accredited college or university that offers distance education programs in other disciplines; and

(A) the person has successfully completed a written examination administered to the positively identified person at a location and proctored by an official approved by the college or university; and

(B) the content and length of the course must meet the requirements for real estate appraisal related courses established by this chapter and by the requirements for qualifying education established by the Appraiser Qualifications Board of the Appraisal Foundation and is equivalent to a minimum of 15 classroom hours.

(2) The course has received the approval for college credit or has been approved under the AQB Course Approval program; and

(A) the person successfully completes a written examination proctored by an official approved by the presenting entity;

(B) the course meets the requirements for qualifying education established by the Appraiser Qualifications Board and is equivalent to the minimum of 15 classroom hours.

~~[(3) A minimum time equal to the number of hours of credit must elapse from the date of course enrollment until its completion.]~~

(j) [~~(l)~~] "In-house" education and training is not acceptable for meeting the educational requirements for certification or licensure.

(k) [~~(m)~~] To be acceptable for meeting the [~~Uniform Standards of Professional Appraisal Practice (~~]USPAP[~~)~~] educational requirement, a course must:

(1) Be devoted to the [~~Uniform Standards of Professional Appraisal Practice (~~]USPAP[~~)~~] with a minimum of 15 classroom hours of instruction;

(2) Use the current edition of the [~~Uniform Standards of Professional Appraisal Practice(~~]USPAP[~~)~~] promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(3) Provide each student with his or her own permanent copy of the current [~~Uniform Standards of Professional Appraisal Practice (~~]USPAP[~~)~~] promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(4) utilize the "National Uniform Standards of Professional Appraisal Practice (USPAP) Course" promulgated by the Appraisal Foundation, including the Student Manual and Instructor Manual or an equivalent USPAP course as determined by the AQB.

(l) [~~(n)~~] Courses specifically approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation, provided that the educational provider has notified the board of the AQB approval.

(m) [~~(o)~~] Neither current members of the Texas Appraiser Licensing and Certification Board nor those board staff engaged in the approval of courses or educational qualifications of applicants, certificate holders or licensees shall be eligible to teach or guest lecture as part of an approved appraiser qualifying or continuing education course.

§153.15. Experience Required for Certification or Licensing.

(a) - (c) (No change.)

(d) Experience by endorsement: An applicant for certification who is currently licensed and in good standing in a state that has not been disapproved by the Appraisal Subcommittee is deemed to satisfy the experience requirements for the same level of certification in Texas. The applicant shall provide appropriate documentation as required by the board.

(e) [~~(d)~~] Experience credit shall be awarded by the board in accordance with current criteria established by the Appraiser Qualifications Board and in accordance with the provisions of the Act specifically relating to experience requirements. An hour of experience means 60 minutes expended in one or more of the acceptable appraisal experience areas. Calculation of the hours of experience must be based solely on actual hours of experience. Any one or any combination of the following categories may be acceptable for satisfying the applicable experience requirement. Experience credit may be awarded for:

(1) Fee or staff appraisal when it is performed in accordance with Standards 1 and 2 and other provisions of the [~~Uniform Standards of Professional Practice (~~]USPAP[~~)~~] in effect at the time of the appraisal.

(2) Ad valorem tax appraisal which:

(A) conforms to USPAP Standard 6; and

(B) demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1.

(3) Condemnation appraisal.

(4) Technical review appraisal to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1.

(5) Appraisal analysis. A market analysis typically performed by a real estate broker or salesman may be awarded experience credit when the analysis is prepared in conformity with USPAP Standards 1 and 2.

(6) Real property appraisal consulting services, including market analysis, cash flow and/or investment analysis, highest and best use analysis, and feasibility analysis when it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1 and performed in accordance with USPAP Standards 4 and 5.

(7) Experience credit may not be awarded for teaching appraisal courses.

(f) [~~(e)~~] Experience claimed by an applicant must be submitted on forms prescribed [~~promulgated~~] by the board.

(1) Experience claimed by an applicant shall be submitted upon an Appraisal Experience Log with an accompanying Appraisal Experience Affidavit.

(2) In exceptional situations, the board, at its discretion, may accept other evidence of experience claimed by the applicant.

(3) If a consumer complaint or peer complaint is brought against the applicant alleging fraud, incompetence [~~incompetency~~], or malpractice and the board finds the complaint is reasonable or if the board determines other just cause exists for requiring further informa-

tion, the board may obtain the additional information or documentation requested by:

(A) requiring the applicant to complete a form, prescribed by the board, that includes detailed listings of appraisal experience showing, for each appraisal claimed by the applicant, the city or county where the appraisal was performed, the type and description of the building or property appraised, the approaches to value utilized in the appraisal, the actual number of hours expended on the appraisal, name of client, and other information determined to be appropriate by the board; or

(B) engaging in other investigative research determined to be appropriate by the board.

(4) The board shall require verification of acceptable experience of all applicants for certification and no more than 5.0% of applicants for licensure, [the applications] selected by random sampling,[. The sampling shall be] applied when a minimum of twenty approved applications are received. Applicants have 60 days to provide all documentation requested by the board. The verification may be obtained by:

(A) requiring the applicant to complete a form, prescribed by the board, that includes detailed listings of appraisal experience showing, for each appraisal claimed by the applicant, the city or county where the appraisal was performed, the type and description of the building or property appraised, the approaches to value utilized in the appraisal, the actual number of hours expended on the appraisal, name of client, and other information determined to be appropriate by the board;

(B) requesting copies of appraisals and all supporting documentation, including the workfiles; and

(C) [(B)] engaging in other investigative research determined to be appropriate by the board.[; and]

[(C) allowing a minimum of 60 days after the date of selection for the applicant to prepare any records.]

(5) Failure to comply with a request for verification of experience, or submission of experience that is found not to comply with the requirements for experience credit, is a violation of these rules and may result in denial of certification or licensure, and any disciplinary action up to and including revocation.

(g) [(f)] An applicant may be granted experience credit only for real property appraisals which:

(1) comply with the [Uniform Standards of Professional Appraisal Practice (]USPAP[)] in effect at the time of the appraisal; [and,]

(2) are verifiable and supported by workfiles in which the applicant is identified as participating in the appraisal process; [and,]

(3) were performed when the applicant had legal authority; and[,]

(4) comply with the acceptable categories of experience as per the AQB experience criteria and stated in subsection (e) [(d)] of this section.

§153.17. Renewal or Extension of Certification and License or Renewal of Trainee Approval.

(a) General Provisions.

(1) The board shall send a renewal notice to the appraiser at least 90 days prior to the expiration of the certification, license, or approval. It is the responsibility of the appraiser or trainee to apply for renewal in accordance with this chapter, and failure to receive a renewal notice from the board does not relieve the appraiser of the responsibility to timely apply for renewal.

(2) An appraiser or appraiser trainee renews the certification, license, or approval by timely filing the prescribed application for renewal, paying the appropriate fees to the board, and satisfying all applicable education and experience requirements.

(3) A renewal is timely if it is complete and, on or before the date of expiration, it is postmarked by the U.S. Postal Service, accepted by an overnight delivery service, or accepted by the agency's online renewal system.

(b) [(a)] [Relating to] General Certification, Residential Certification, State License, and Provisional License.

(1) [A license or certification issued by the board is valid for two years after the date of issuance.] A certified or licensed appraiser may renew the certification or license by timely filing the prescribed application for renewal, paying the appropriate fees to the board and, unless renewing on inactive status, satisfying ACE [appraiser continuing education] requirements. Provisional licensees must also provide a copy of an appraisal log and experience affidavit, on forms prescribed by the board, for the period of licensure being renewed.[, unless on inactive status, as provided by §153.18 of this title (relating to Appraiser Continuing Education).]

[(2) The board shall mail the prescribed renewal application form to the appraiser's last known business address at least 90 days prior to the expiration of the certification or license. It is the responsibility of the appraiser to apply for renewal, or extension, in accordance with these sections, and failure to receive a renewal application from the board does not relieve the appraiser of the responsibility of timely applying for renewal.]

[(3) A certification or license may be renewed by timely filing a renewal application or timely filing a request for extension as specified in §153.17(a)(5) and (6) of this title. An appraiser who does not timely renew or request an extension must reapply for certification or license in accordance with the provisions of §153.9 of this title (relating to Applications). If the application is filed within one year of the expiration of a previous certification or license, the applicant shall also provide satisfactory evidence of completion of any continuing education, as provided by §153.18 of this title, that would have been required for a timely renewal of the previous certification or license. If the application for certification or license is filed more than one year after the expiration of the previous certification or license, the applicant must successfully complete the examination required by §153.11 of this title (relating to Examinations).]

(2) In order to renew on active status, the applicant must complete the ACE report form approved by the board and submit course completion certificates for each course that was not already submitted by the provider and reflected in the applicant's electronic license record.

[(4) An ACE Report, on a form prescribed by the board, must be submitted with each application for renewal. The ACE Report may be filed electronically by those who are renewing through the TexasOnline system.]

(A) The board may request additional verification of ACE submitted in connection with a renewal.

(B) [(A)] Knowingly or intentionally furnishing false or misleading ACE information in connection with a renewal [the ACE Report filed under this section] is grounds for disciplinary action up to and including revocation of certification or licensure [as provided by

§153.20(12) of this title (relating to Guidelines for Revocation, Suspension or Denial of Licensure or Certification)].

[(B) It is the appraiser's responsibility to maintain a record to document the ACE, which is claimed for the renewal, and the documentation must be kept in the appraiser's file for 5 years. The documentation must contain all transcripts or course certificates or continuing education forms applicable to the courses claimed issued by the course provider(s).]

[(C) The board may require verification of acceptable ACE for any renewal application. The renewing appraiser must submit the documentation within 20 days after the date of notification. The verification may be obtained by:]

[(i) requiring copies of all transcripts or course certificates or continuing education forms that were issued by the course provider(s); and]

[(ii) engaging in other investigative research determined to be appropriate by the board.]

[(D) Failure to comply with a request for verification of ACE documentation is a violation of these rules and may result in revocation or suspension of certification or licensure and other disciplinary action.]

[(5) Provisional licensees must provide a copy of an appraisal log and affidavit, on forms prescribed by the board, for the period of licensure being renewed.]

(3) [(6)] An appraiser renewal application or extension is acceptable for processing when it is received by the board, with proper fees, and is postmarked by the U.S. Postal Service, accepted by an overnight delivery service, or entered electronically into the TexasOnline system, on or before the expiration date of the certification or license.

(A) The [Upon receipt of a complete request for an extension the] board may grant, at the time it issues a certification or license renewal, an extension of time of up to 60 days after the date of expiration of the previous license [renewal] to complete [appraiser continuing education (] ACE[)] required to renew a general certification, residential certification, state license, or provisional license, provided the person:

(i) timely submits the completed renewal form [Appraiser Renewal Form] with the appropriate renewal fees;

(ii) completes an extension request form [Extension Request Form]; and

(iii) pays an extension fee of $200.[;]

[(iv) completes the required ACE no later than the 60th day after the date the certification or license is renewed; and]

[(v) submits a non-revokable request for inactive status form with an effective date 60 days after the current renewal date (which request shall be considered withdrawn if the person successfully completes the required ACE within the authorized period of the extension).]

(B) ACE courses completed during the 60-day extension period apply only to the current renewal and may not be applied to any subsequent renewal of the license or certification.

(C) A person whose license was renewed with a 60-day ACE extension [who has been granted an extension to complete ACE requirements]:

(i) shall not perform appraisals in a federally related transaction (FRT) until verification is received by the board that the ACE requirements have been met;

(ii) may continue to perform appraisals in non-federally related transactions (non-FRT [Non-FRT]) under the renewed license or certification; [and]

(iii) must, within 60 days after the date of expiration of the previous license, complete the approved ACE report form and submit course completion certificates for each course that was not already submitted by the provider and reflected in the applicant's electronic license record; and

(iv) [(iii)] will have the renewed license or certification placed in inactive status if, within 60 days of the previous expiration date, ACE is not completed and reported in the manner indicated in paragraph (2) of this subsection. [satisfactory evidence of meeting the required ACE requirements has not been completed and received by the board within 60 days of the previous expiration date.] The renewed license or certification will [be] remain on inactive status [by the board] until satisfactory evidence of meeting the ACE requirements has been received by the board and the fee to return to active status required by §153.5 of this title (relating to Fees [fees]) has been paid.

(c) [(b)] [Relating to] Appraiser Trainees.

[(1) An appraiser trainee approval issued by the board is valid for one year after the date of issuance. An appraiser trainee may renew the trainee approval by timely filing the prescribed application for renewal, paying the appropriate fees to the board and satisfying education requirements as provided by §153.18(b) of this title.]

[(2) The board shall mail the prescribed renewal application form to the appraiser trainee's last known business address at least 90 days prior to the expiration of the approval. It is the responsibility of the appraiser trainee to apply for renewal, in accordance with these sections. Failure to receive a renewal application from the board does not relieve the appraiser trainee of the responsibility of timely applying for renewal.]

[(3) An appraiser renewal application is acceptable for processing when it is received by the board, with proper fees, and is postmarked by the U.S. Postal Service, accepted by an overnight delivery service, or entered electronically into the TexasOnline system, on or before the expiration date of the trainee approval.]

(1) [(4)] Appraiser trainees must provide a copy of an appraisal log and appraisal experience affidavits on forms prescribed by the board, for the period of authorization or approval being renewed.

(2) Appraiser trainees may not obtain an extension of time to complete required continuing education.

[(5) An approved appraiser trainee who does not timely file a renewal application prior to the expiration date must reapply for approval as an appraiser trainee in accordance with the provisions of §153.9 of this title.]

[(6) With a new application for approval, the applicant shall also provide satisfactory evidence of completion of current annual renewal education, as provided by §153.18(b) of this title, and an appraisal experience log and affidavit as provided by §153.17(b)(4) of this title, that would have been required for a timely renewal of the previous approval as an appraiser trainee.]

[(7) The board does not grant extensions for meeting education requirements for the appraiser trainee classification.]

(d) [(c)] Renewal of Licenses or Certification for Servicemen on Active Duty.

(1) A person previously licensed or certified by the board under this Act who is on active duty in the United States armed forces may renew an expired license or certification without being subject to any increase in fee imposed in his or her absence, or any additional education or experience requirements if the person:

(A) did [~~Did~~] not provide appraisal services when on active duty;

(B) provides a copy of official orders or other documentation acceptable to the board showing that the person was on active duty during the person's last renewal period;

(C) applies for the renewal within 90 days after the person's active duty ends; and

(D) pays the renewal application fees in effect when the previous license or certification expired.

(2) ACE [~~Appraiser continuing education~~] requirements [~~as set out in §153.18 of this title,~~] that would have been imposed for a timely renewal shall be deferred under this section for a period of up to 90 days.

(e) Expiration and Reapplication.

(1) An appraiser who wishes to become certified or licensed after the certification or license has expired must reapply for certification or licensure in accordance with the provisions of §153.9 of this title (relating to Applications). If the application is filed within one year of the expiration of a previous certification or license, the applicant shall also provide satisfactory evidence of completion of any continuing education that would have been required for a timely renewal of the previous certification or license. If the application for certification or license is filed more than one year after the expiration of the previous certification or license, the applicant must meet all then-current requirements for certification or licensure, including retaking and passing the examination.

(2) An appraiser trainee who wishes to become approved as an appraiser trainee after the approval has expired must reapply for approval as an appraiser trainee in accordance with the provisions of §153.9 of this title.

[~~(d) Denial of Licensing and Certification of Persons who are in Default on Texas Guaranteed Student Loan Corporation (TGSLC) Loans.~~]

[~~(1) Renewals of licenses and certifications issued by the board are subject to the policies established by the Texas Education Code, §57.491.~~]

[~~(2) Before the board declines to renew a license or certification due to default on a loan guaranteed by the TGSLC, a default on a repayment agreement with TGSLC, or a failure to enter a repayment agreement with TGSLC, the board shall give notice and provide an opportunity for a hearing in accordance with the provisions of the Texas Government Code, §2001.051 et seq.~~]

[~~(3) The board shall advise those licensed or certified in renewal notices and shall advise those who apply for licensure or certification in application forms that default on a loan guaranteed by TGSLC may prevent subsequent renewal of a license or certification or prevent the approval of an initial application for license or certification.~~]

(f) [~~(e)~~] Identity Theft.

(1) For purposes of this subsection "identity theft" shall mean any of the following activities occurring in connection with the rendition of real estate appraisal services:

(A) Unlawfully obtaining, possessing, transferring or using a certification, license, authorization or registration issued by the board;

(B) Unlawfully obtaining, possessing, transferring or using a person's electronic or handwritten signature.

(2) A person holding a certification, license, authorization or registration issued by the board shall implement and maintain reasonable procedures to protect and safeguard themselves from identity theft.

(3) A person holding a certification, license, authorization or registration shall notify the board if they are the victim of identity theft within 90 [~~(90) ninety~~] days of discovering such theft. Notice shall be effectuated by filing a signed, written request [~~complaint~~] on a form prescribed by the board.

(4) The board may invalidate a current certification, license, authorization or registration and issue a new one to a person the board determines is a victim of identity theft. Any person seeking the invalidation of a current certification, license, authorization or registration and issuance of a new one shall[~~:~~]

[~~(A)~~] submit a written, signed request on a form provided by the board for the invalidation of a current certification, license, approval, authorization or registration and issuance of a new one. The basis for the request must be [~~because the person is a victim of~~] identity theft, [~~and shall be made on a form prescribed by the board;~~] and

[~~(B)~~] the requestor must [~~have the burden to~~] submit credible evidence that the person is a [~~that the board determines is credible which demonstrates they are the~~] victim of identity theft.[~~;~~] Without limiting the type of evidence a person may submit to the board, a court order issued in accordance with Texas Business and Commerce Code Chapter 521, Subchapter C, [~~§48.202,~~] declaring that the person is a victim of identity theft shall constitute credible evidence. Any such court order must relate to identity theft as defined in this subsection.

(5) Engaging in identity theft in order to perform appraisals a person is not legally permitted to perform[~~,~~] constitutes a violation of [~~§~~]§153.20(a)(7), (20), and (22) [~~(4), (18) and (20)~~] of this title. In [~~and in~~] addition to any action taken by the board, persons engaging in identity theft may also be referred to the appropriate law enforcement agency for criminal prosecution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 8, 2010.

TRD-201005223
Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 465-3938

♦ ♦ ♦

22 TAC §§153.19 - 153.21, 153.23, 153.25, 153.27, 153.33, 153.37

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC Chapter 153, §§153.19 - 153.21, 153.23, 153.25, 153.27, 153.33, and 153.37, concerning Rules Relating to Provisions of the Texas Appraiser

Licensing and Certification Act. The proposed amendments result from the Board's rule review process and reflect both substantive and non-substantive changes.

The proposed amendments to §153.19, Licensing and Certification for Persons with Criminal Histories, reflect non-substantive changes to provisions regarding licensure of persons with criminal histories, including those who request the Board to make a determination regarding their background before an application for licensure or certification is filed.

The proposed amendments to §153.20, Guidelines for Revocation, Suspension, or Denial of Licensure or Certification, would add a requirement that licensees notify the board within 30 days of disciplinary action against other occupational licenses they hold, delete provisions relating to mental illness, incorporate provisions of 22 TAC §153.22 relating to responding to requests for information from the board, restore certain provisions relating to conditions of probation under subsection (c), and add one additional condition of probation. The proposed amendments also include a non-substantive reorganization of certain provisions.

The proposed amendments to §153.21, Appraiser Trainees and Sponsors, would clarify the responsibilities of a trainee's sponsor or authorized supervisor, omit provisions relating to requirements for licensure that are duplicative of the Appraiser Licensing and Certification Act, delete language related to changes that became effective in 2006 and 2008, change "prescribed" to "approved" regarding forms to reflect the change from promulgated application forms to forms that are approved by the board, clarify the requirement for sponsors and authorized supervisors to diligently sponsor trainees, and make other non-substantive changes.

The proposed amendments to §153.23, Inactive Certificate or License, constitute a non-substantive rewrite of this section.

The proposed amendments to §153.25, Temporary Non-Resident Registration, would modify the terminology to refer to "temporary out-of-state registration" instead of "temporary non-resident registration" in accordance with the statutory language relating to temporary registration. The amendments would also change "prescribed" to "approved" regarding forms to reflect the change from promulgated application forms to forms that are approved by the board.

The proposed amendments to §153.27, Certification and Licensure by Reciprocity, would reorganize the section for readability and delete provisions that are duplicative of Texas Occupations Code §1103.209, Reciprocal Certificate or License.

The proposed amendments to §153.33, Signature or Endorsement of Appraisal, would reorganize the section for readability and delete provisions that are duplicative of Texas Occupations Code §1103.402, Signature or Endorsement on Appraisal.

The proposed amendments to §153.37, Offenses with Criminal, Civil, and Administrative Penalties, would delete provisions that are duplicative of Texas Occupations Code, Chapter 1103, including Subchapter L, Penalties and Other Enforcement Provisions, as well as a provision that is addressed in the Penal Code.

Devon V. Bijansky, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on individuals, small businesses or micro-businesses as a result of implementing the amendments.

Ms. Bijansky has also determined that the anticipated public benefit as a result of these amendments is greater clarity, consistency, and efficiency in TALCB's licensing processes.

Comments on the proposed amendments may be submitted to Devon V. Bijansky, General Counsel, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Occupations Code, §1103.151, Rules Relating to Certificates and Licenses.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§153.19. Licensing and Certification for Persons with Criminal Histories.

(a) - (e) (No change.)

(f) It shall be the responsibility of the applicant to the extent possible to secure and provide the board the recommendations of the prosecution, law enforcement, and correctional authorities, as well as evidence, in the form required by the board, relating to whether the applicant [~~; the applicant shall also furnish proof in such form as may be required by the board that he or she~~] has maintained a record of steady employment, [~~and~~] has supported his or her dependents and otherwise maintained a record of good conduct, and is current on the payment of [~~has paid~~] all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(g) Criminal History Evaluation [~~Letter~~]. Before applying for a license or certification under this chapter, a person with a criminal history may request that the Board evaluate the prospective applicant's [~~issue a~~] criminal history by submitting the request form approved by the board [~~evaluation letter~~]. Upon receiving such a request, the Board may request additional supporting materials. Requests will be processed under the same standards as applications for licensure or certification. In responding to a request, the Board shall address each offense listed in the request.

§153.20. Guidelines for Revocation, Suspension, or Denial of Licensure or Certification.

(a) The board may suspend or revoke a license, certification, authorization or registration issued under provisions of this Act or deny issuing a license, certification, authorization or registration to an applicant at any time when it has been determined that the person applying for or holding the license, certification, authorization, or registration:

(1) disregards or violates a provision of the Act or of the Rules of the Texas Appraiser Licensing and Certification Board;

(2) is convicted of a felony;

(3) fails to notify the board not later than the 30th day after the date of the final conviction if the person, in a court of this or another state or in a federal court, has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud or moral turpitude;

(4) fails to notify the board not later than the 30th day after the date of incarceration if the person, in this or another state, has been incarcerated for a criminal offense involving fraud or moral turpitude;

(5) fails to notify the board not later than the 30th day after the date disciplinary action becomes final against the person with regard to any occupational license the person holds in Texas or any other jurisdiction;

[(1) has been convicted of a felony;]

[(2) has disregarded or violated a provision of the Act or of the Rules of the Texas Appraiser Licensing and Certification Board;]

(6) [(3)] fails [has failed] to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal or appraisal practice;

(7) [(4)] acts or holds [has acted or held] himself or herself or any other person out as a licensed or certified real estate appraiser under the Act when not so licensed or certified;

(8) [(5)] accepts [has accepted] payment for appraiser services but fails [and has failed] to deliver the agreed service in the agreed upon manner;

(9) [(6)] refuses [has refused] to refund payment received for appraiser services when he or she has failed to deliver the appraiser service in the agreed upon manner;

(10) [(7)] accepts [has accepted] payment for services contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made;

(11) [(8)] offers [has offered] to perform appraiser services or agrees [has agreed] to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made;

(12) [(9)] makes [has made] a material misrepresentation or omission of material fact;

(13) [(10)] has had a license or certification as an appraiser revoked, suspended, or otherwise acted against by any other jurisdiction for an act which is an offense under Texas law;

[(11) is confined in any county jail, post adjudication; is confined in any state or federal prison or mental institution; or through mental disease or deterioration, can no longer safely be entrusted to deal with the public or in a confidential capacity;]

(14) [(12)] procures [has procured] a license, certification, authorization, approval, or registration pursuant to the Act by making false, misleading, or fraudulent representation;

(15) [(13)] fails [has failed] to actively, personally, and diligently supervise an appraiser trainee under his or her sponsorship or any person not licensed or certified under the Act who assists the licensee or certificate holder in performing real estate appraiser services;

(16) [(14)] has had a final civil judgment entered against him or her on any one of the following grounds:

(A) fraud;

(B) intentional or knowing misrepresentation;

(C) grossly negligent misrepresentation in the making of real estate appraiser services;

(17) [(15)] fails [has failed] to make good on a payment issued to the board within thirty days after the board has mailed a request for payment by certified mail to the licensee's last known business address as reflected by the board's records;

(18) [(16)] [has] knowingly or willfully engages [engaged] in false or misleading conduct or advertising with respect to client solicitation;

(19) [(17)] acts or holds [has acted or held] himself or any other person out as a licensed or certified real estate appraiser under this or another state's Act when not so licensed or certified;

(20) [(18)] misuses or misrepresents [has misused or misrepresented] the type of classification or category of licensure, certification, approval, or registration, or the license, certification, approval, or registration number;

(21) [(19)] engages [has engaged] in any other act relating to the business or appraising that the board, in its discretion, believes warrants a suspension or revocation;

(22) [(20)] uses [has used] any title, designation, initial or other insignia or identification that would mislead the public as to that person's credentials, qualifications, competency, or ability to perform certified or licensed appraisal services;

(23) [(21)] fails [has failed] to comply with a final order of the board; or

(24) fails to answer all inquiries concerning matters under the jurisdiction of the board within 20 days of notice to said individual's address of record, or within the time period allowed if granted a written extension by the board.

[(22) has failed to notify the board not later than the 30th day after the date of the final conviction of the person, in a court of this or another state or in a federal court, has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud or moral turpitude; and]

[(23) has failed to notify the board not later than the 30th day after the date of incarceration if the person, in this or another state, has been incarcerated for a criminal offense involving fraud or moral turpitude.]

(b) The board has discretion in determining the appropriate penalty for any violation under subsection (a) of this section.

(c) The board may probate a penalty or sanction, and may impose conditions of the probation, including, but not limited to:

(1) the type and scope of appraisals or appraisal practice;

(2) the number of appraiser trainees or authority to sponsor appraiser trainees;

(3) requirements for additional education;

(4) monetary administrative penalties; and

(5) requirements for reporting real property appraisal activity to the board.

(d) - (j) (No change.)

§153.21. Appraiser Trainees and Sponsors.

(a) A person desiring to be an appraiser trainee under the sponsorship of one or more state certified appraisers may apply to the board on the approved application for trainee authorization. In addition to the requirements set forth in §1103.353 of the Act [on the application form prescribed by the board on the application form prescribed by the board. For all applications received after March 31, 2006], a prospective appraiser trainee must: [meet the requirements set forth in §1103.353 of the Texas Appraiser Licensing and Certification Act,]

(1) complete 75 creditable classroom hours as set forth in the Trainee Core Curriculum of the Appraiser Qualifications Board; and[, and must]

(2) pass the 15 hours National USPAP course and examination. [A prospective trainee must be a citizen of the United States or

a lawfully admitted alien; be at least 18 years of age; be a legal resident of this state for at least 60 days immediately before the filing of the application; and satisfy the board as to the prospective trainee's honesty, trustworthiness, and integrity.]

(b) Once a person is approved as an appraiser trainee by the board, the person may perform appraisals or appraiser services only under the active, personal and diligent direction and supervision of a sponsoring certified appraiser. The trainee's authorization to perform appraisals or appraisal services terminates if [unless one of the following events occurs]:

(1) the appraiser trainee approval expires due to nonpayment of the annual renewal fee or failure to satisfy the educational or experience requirements for renewal [have not been met];

(2) the sponsorship is terminated by either the sponsor or the trainee, leaving the appraiser trainee without a sponsoring certified appraiser; or

(3) the trainee's authority to act has been suspended or revoked by the board.

(c) [(b)] The sponsoring certified appraiser shall immediately notify the board and the trainee in writing of any termination of sponsorship of an appraiser trainee, on a form approved [prescribed] by the board and shall pay a fee set by the board not later than the 10th day after the date of such termination. [The board will notify the trainee that the sponsorship has been terminated.]

(d) [(c)] If an appraiser trainee's approval has expired or been revoked by the board or the trainee is no longer under the sponsorship of a certified appraiser, the appraiser trainee may not perform the duties of an appraiser trainee until an application to sponsor the trainee has been filed together with the appropriate fee and approved by the board.

(e) [(d)] Certified appraisers who sponsor appraiser trainees or who sign a report shall be responsible to the public and to the board for the conduct of the appraiser trainee under the Act. After notice and hearing, the board may reprimand a sponsoring appraiser or supervisor or may suspend or revoke a sponsoring appraiser's or supervisor's certification based on conduct by the appraiser trainee constituting a violation of the Act or a rule of the board.

(f) [(e)] A certified appraiser may be added as a sponsor during the term of an appraiser trainee's authorization, by completing a form approved [prescribed] by the board and paying a fee set by the board, and shall assume all the duties, responsibilities, and obligations of an appraiser trainee sponsor as specified in these rules.

(g) [(f)] The sponsoring certified appraiser and[,] any authorized supervisors must diligently supervise the trainee. Diligent supervision includes, but is not limited to, the following: [supervisor and the appraiser trainee must reside in this state.]

(1) direct supervision and training as necessary;

(2) ongoing training and supervision as necessary after the sponsor determines that the trainee no longer requires direct supervision;

(3) communication with and accessibility to the trainee; and

(4) review and quality control of the trainee's work.

[(g) No individual shall sponsor more than three appraiser trainees at one time after December 31, 2007. Prior to January 1, 2008, individuals sponsoring three or more appraiser trainees may not take on any additional appraiser trainees nor shall they be allowed to renew any sponsorship which would result in the individual sponsoring more than three appraiser trainees.]

(h) (No change.)

(i) Certified appraisers may sponsor no more than three trainees at one time. Notification of sponsorship of an appraiser trainee must be provided in writing to the board on a form approved [prescribed] by the board with the appropriate fee prior to the assumption of sponsorship. Termination of sponsorship of an appraiser trainee must be provided in writing to the board on a form approved [prescribed] by the board with the appropriate fee prior to the release from sponsorship. A sponsor may designate another certified appraiser to serve as an authorized supervisor on specific appraisal projects for which state authorization is required. An authorized supervisor assumes the same responsibilities as a sponsor when supervising the work of an appraiser trainee.

(j) - (k) (No change.)

§153.23. Inactive Certificate or License.

(a) A currently certified or licensed appraiser may request to be placed on inactive status by filing a request for inactive status on a form approved by the board and paying the required fee. [provided the appraiser:]

[(1) applies to the board before the expiration date of the appraiser's certificate or license on a Request for Inactive Status form approved by the board;]

[(2) pays the appropriate renewal fees and inactive status fee as specified in §153.5 of this title (relating to fees);]

[(3) confirms in writing on a form approved by the board, that the certified appraiser has given any appraiser trainee sponsored by the certified appraiser written notice of termination of sponsorship at least 30 days prior to filing the request for inactive status; and]

[(4) returns the original current license or certificate to the board.]

(b) A certified or licensed appraiser whose certificate or license has expired may renew [request to be placed] on inactive status by[, provided the appraiser]:

(1) filing, within one year of expiration, an application for late renewal on a form approved by the board;

(2) indicating on the application that the appraiser wishes to renew on inactive status; and

[(1) applies to the board no later than the first anniversary of the expiration date of the appraiser's certificate or license on a Request for Inactive Status form approved by the board; and]

(3) [(2)] paying [pays] the required [appropriate] renewal fees [and inactive status fee as specified in §153.5 of this title].

(c) An appraiser on inactive status:

(1) shall not appraise real property, engage in appraisal practice, or perform any activity for which an appraiser license or certification is required; and [.]

(2) must file the proper application and pay all required fees, except for the national registry fee, in order to renew the license or certification.

[(2) must pay appropriate renewal fees and inactive status fees as specified in §153.5 of this title.]

[(3) is not required to pay the national registry fee as specified in §153.5 of this title.]

[(4) in order to continue on inactive status, the appraiser must renew the certificate or license as specified in §153.17 of this title (relating to Renewal or Extension of Certification and License or Renewal of Trainee Approval), and pay appropriate fees as specified in §153.5 of this title.]

(d) To return to active status, a licensed or certified appraiser who has been placed on inactive status must:

(1) request to [apply to the board for] return to active status on a [Request to Return to Active Status] form approved by the board;

(2) pay the return to active status fee [appropriate fees as specified in §153.5 of this title]; and

(3) satisfy all appraiser continuing education (ACE) requirements [specified in §153.18 of this title (relating to Appraiser Continuing Education)] that were not completed while on inactive status, except that the appraiser is not required to complete the most current USPAP update course more than once in order to return to active status and shall substitute other approved courses to meet the required number of hours of ACE.

(e) A licensed or certified appraiser who has been on inactive status may not resume practice until [once the appraiser has applied for return to active status, satisfied ACE requirements, paid the appropriate fees, and] the active license or certification has been issued by the board.

§153.25. Temporary Out-of-State Appraiser [Non-Resident] Registration.

(a) A person licensed or certified as an appraiser by another state, commonwealth, or territory may register with the board so as to qualify to appraise real property in this state without holding a license or certification issued under the Act if:

(1) - (2) (No change.)

(b) A person wishing to be registered under this section [subsection] must submit a completed application form approved [prescribed] by the board.

(c) A person registered under this section [subsection] must submit an irrevocable consent to service of process in this state on a form approved [prescribed] by the board.

(d) An appraiser registered under this section [subsection] may apply for a 90 day extension to the original expiration date of the temporary [non-resident] registration, provided the appraiser:

(1) is continuing the same appraisal assignment listed on the original application for temporary out-of-state appraiser registration [Temporary Non-Resident Appraiser Registration application]; and

(2) requests an extension on a form approved [prescribed] by the board, received by the board[,] or postmarked prior to the expiration of the current temporary [non-resident] registration.

§153.27. Certification and Licensure by Reciprocity.

(a) A person who is licensed or certified as an appraiser under the laws of a state having a valid reciprocity agreement with the board at the level of the person's license in the other state [licensure or certification requirements that have not been disapproved by the Appraisal Subcommittee] may apply for a Texas license or certification at that same level [under the Act] by completing and submitting to the board the application for licensure or certification or license by reciprocity and paying to the board the fee. [An applicant for certification or licensure by reciprocity also must complete and submit a Supplement to Application for Appraiser Certification or Licensing by Reciprocity or its successor.]

[(b) A non-Texas resident person applying for a license or certification under this subsection must submit an irrevocable consent to service of process in this state on a form prescribed by the board.]

[(c) An application may not be accepted from a person from a state that refuses to offer reciprocal treatment to residents of this state who are certified or licensed real estate appraisers.]

(b) [(d)] The board shall seek verification from an applicant's state of current licensure that the applicant's license or certification is valid and in good standing. A reciprocal license or certificate may not be issued without the verification required by this subsection.

[(e) A person holding a license or certification by reciprocity must pay the federal registry fee and other fees imposed by the board. The total application fees required for certification or licensure by reciprocity shall be equal to the amount of the application, processing, and issuance fees required for a Texas certified or licensed appraiser to become certified or licensed.]

[(f) A reciprocal license or certification expires on the same date that the license or certification held by the applicant in the applicant's state of current licensure expires but in no instance more than two years from the date of issuance of the reciprocal license or certification.]

(c) [(g)] Renewal of a certification or license granted through reciprocity shall be in the same manner, and with the same requirements, term, and fees, as for the same classification of certified or licensed appraiser as provided in §153.17 of this title [(relating to Renewal of Certification, License, or Trainee Approval)].

§153.33. Signature or Endorsement of Appraisal.

[(a) A person licensed or certified under the Act may not sign or endorse an appraisal that was not substantially produced by the person. For purposes of this section, an appraisal is substantially produced by a person who contributes materially and in a verifiable manner to the research or analysis that led to the final opinion of value expressed in the appraisal.]

[(b)] An [For purposes of this section, an] appraisal is deemed to have been substantially produced by a person who is certified or licensed under the Act, and that person is fully and completely responsible for the contents of the appraisal report, if the person has signed the report. [by the appearance of his or her signature on the appraisal report and thus is fully and completely responsible for the contents of the appraisal report.]

§153.37. Criminal Matters Referred to Law Enforcement [Offenses with Criminal, Civil, and Administrative Penalties].

[(a) A person not licensed or certified under the Act commits a Class A misdemeanor if the person engages in real estate appraisal, appraisal practice, or any appraisal related activity for which a certificate or license is required.]

[(b) A person not licensed or certified under the Act who engages in real estate appraisal, appraisal practice, or any appraisal related activity for which a certificate or license is required is liable for civil penalties of not less than the amount of the consideration received or more than three times the amount of the consideration received.]

[(c) A person not licensed or certified under the Act who engages in real estate appraisal, appraisal practice, or any appraisal related activity for which a certificate or license is required is liable for administrative penalties as set by the board.]

[(d) A person not licensed or certified under the Act commits a Class B misdemeanor if the person knowingly or intentionally uses any title, designation, initials, or other insignia or identification that would

~~mislead the public as to the person's credentials, qualifications, competency, or ability to perform certified or licensed appraiser services.~~]

[~~(e) A person commits a Class B misdemeanor if the person knowingly or intentionally furnishes false information in connection with an affidavit filed pursuant to §153.15(e) of this title (relating to Experience Required for Certification or Licensing).~~]

[~~(f)~~] Matters that are referred to the appropriate state or federal law enforcement agency for criminal investigation and prosecution [~~The board's attorney, in matters determined to involve criminal conduct may refer a complaint to the appropriate state or federal law enforcement agency or prosecutorial authority for criminal investigation and prosecution. Regardless of whether a referral is made for investigation and prosecution, the matter~~] shall also be fully and appropriately investigated by the board's investigators, and the board shall take [~~after completing such an investigation~~] appropriate disciplinary action [~~shall be taken by the board~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 8, 2010.

TRD-201005224
Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 465-3938

♦ ♦ ♦

22 TAC §153.22, §153.31

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Appraiser Licensing and Certification Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Appraiser Licensing and Certification Board (TALCB) proposes the repeal of 22 TAC §153.22, concerning License Holder's Responsibility to the Board, and §153.31, concerning Office Location. The proposed repeal of these sections results from the Board's rule review process.

Section 153.22, License Holder's Responsibility to the Board, is proposed to be repealed because its provisions are proposed, elsewhere in this issue, to be incorporated into 22 TAC §153.20, Guidelines for Revocation, Suspension, or Denial of Licensure or Certification.

Section 153.31, Office Location, is proposed to be repealed because its provisions are duplicative of Texas Occupations Code §1103.403, Office Location.

Devon V. Bijansky, General Counsel, has determined that for the first five-year period the proposed repeals are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the repeals. There is no anticipated impact on local or state employment as a result of implementing the repeals. There is no anticipated impact on individuals, small businesses or micro-businesses as a result of implementing the repeals.

Ms. Bijansky has also determined that the anticipated public benefit as a result of the repeal of these sections is greater clarity, consistency, and efficiency in TALCB's licensing processes.

Comments on the proposed repeals may be submitted to Devon V. Bijansky, General Counsel, P.O. Box 12188, Austin, Texas 78711-2188.

The repeals are proposed under the Texas Occupations Code, §1103.151, Rules Relating to Certificates and Licenses.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed repeal of these sections.

§153.22. License Holder's Responsibility to the Board.

§153.31. Office Location.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 8, 2010.

TRD-201005225
Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 465-3938

♦ ♦ ♦

PART 9. TEXAS MEDICAL BOARD

CHAPTER 164. PHYSICIAN ADVERTISING

22 TAC §164.4

The Texas Medical Board (Board) proposes amendments to §164.4, concerning Board Certification.

The amendment clarifies what specialty certifying boards a physician may use in advertisements.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the proposal will be to ensure that physicians advertise board certification only of boards approved by the board for purposes of advertising and to protect the public from false or misleading advertising related to a physician's board certification.

Ms. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of

medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §164.052(a)(6), Texas Occupations Code.

§164.4. Board Certification.

(a) A physician is authorized to use the term "board certified" in any advertising for his or her practice only if the specialty board that conferred the certification and the certifying organization is a member board of the American Board of Medical Specialties (ABMS), or the American Osteopathic Association Bureau of Osteopathic Specialists (BOS), or is the American Board of Oral and Maxillofacial Surgery.

(b) Physicians who are certified by a board that does not meet the criteria of subsection (a) of this section, shall be authorized to use the term "board certified" only if the medical board determines that the physician-based certifying organization that conferred the certification has certification requirements that are substantially equivalent to the requirements of the ABMS or the BOS existing at the time of application to the medical board. Physicians must submit an application to a committee of the medical board, and demonstrate that: [~~A physician is authorized to advertise that the physician is a member, fellow, diplomate, or certified by a named organization or other designation calculated to convey a similar meaning, if such designation is accurate, only if the organization meets the following requirements:~~]

(1) the organization requires all physicians who are seeking certification to successfully pass a written or an oral examination or both, which tests the applicant's knowledge and skills in the specialty or subspecialty area of medicine. All or part of the examination may be delegated to a testing organization. All examinations require a psychometric evaluation for validation;

(2) the organization has written proof of a determination by the Internal Revenue Service that the certifying board is tax exempt under the Internal Revenue Code pursuant to Section 501(c);

(3) the organization has a permanent headquarters and staff;

(4) the organization has at least 100 duly licensed members, fellows, diplomates, or certificate holders from at least one-third of the states; [~~and~~]

(5) the organization requires all physicians who are seeking certification to have successfully [~~satisfactorily~~] completed postgraduate training that is accredited by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association and that provides substantial and identifiable supervised training of comprehensive scope in the specialty or subspecialty certified [~~identifiable and substantial training in the specialty or subspecialty area of medicine in which the physician is seeking certification~~], and the organization utilizes appropriate peer review; [~~. This identifiable training shall be deemed acceptable unless determined by the Texas Medical Board to be inadequate in scope, content, and duration in that specialty or subspecialty area of medicine in order to protect the public health and safety.~~]

(6) the organization provides an online resource for the consumer to verify the board certification of its members; and

(7) the organization has the ability to provide a full explanation of its certification process and membership upon request by the Texas Medical Board.

(c) A physician may not authorize the use of or use the term "board certified" if the claimed board certification has expired and has not been renewed at the time the advertising in question was ordered.

(d) The terms "board eligible," "board qualified," or any similar words or phrase calculated to convey the same meaning may not be used in physician advertising.

(e) A physician's authorization of or use of the term "board certified", or any similar words or phrase calculated to convey the same meaning in any advertising for his or her practice shall constitute misleading or deceptive advertising unless the specialty board which conferred the certification and the certifying organization meet the requirements in subsection (a) or (b) of this section.

(f) A physician may advertise a field of interest if the physician is certified by, or a member, fellow, or diplomate of an organization that meets the requirements of subsection (a) or (b) of this section.

(g) A board certified physician who advertises board certification may advertise a field of interest that is different from the certified specialty only if the physician identifies the specialty for which the physician is board certified in an equal size of type or emphasis.

(h) A physician who is not board certified by, or a member, fellow, or diplomate of an organization that meets either the requirements of subsection (a) or (b) of this section may not advertise a field of interest, except that the physician may advertise that his or her practice is "limited to" a certain practice area.

(i) A physician who holds a certification that was granted prior to September 1, 2010, and whose certifying board was approved by the medical board for advertising purposes prior to September 1, 2010, is considered to meet the requirements of subsection (b) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 7, 2010.

TRD-201005209
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 305-7016

♦ ♦ ♦

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER F. PRE-LICENSE EDUCATION AND EXAMINATION

22 TAC §§535.61 - 535.68

The Texas Real Estate Commission (TREC or the commission) proposes amendments to §535.61, concerning examinations; §535.62, concerning Acceptable Courses of Study; and proposes new §535.63, concerning Accreditation of Core Education Schools; new §535.64, concerning Obtaining Approval to Offer a Course; new §535.65, concerning Operation of Core Education Schools; new §535.66, concerning Core Education Providers: Audits, Investigations, and Enforcement Actions; new §535.67, concerning Approval of Instructors; and new §535.68, concerning Additional Information Related to an Application. The commission renames the subchapter name from "Education,

Experience, Educational Programs, Time Periods and Type of Licensure" to "Pre-License Education and Examination."

The subchapter name as amended more appropriately addresses the proposed new content of the subchapter which TREC is simultaneously proposing as part of a comprehensive rule review of 22 TAC Chapter 535. As the reformation of the subchapters will comprehensively address the subjects of the proposed amendments and new rules, it is necessary to avoid confusion and repetition.

Section 535.61 is amended to delete a redundant provision regarding the confidentiality of the examination as contents of the examination are confidential under the Texas Public Information Act, Texas Government Code Chapter 552. The amendments to §535.61(a)(1) and (3) remove the requirements of intent or knowledge. Thus, engaging in any of the listed activities with respect to the TREC exam is considered grounds for disciplinary action regardless of the intent or knowledge of the applicant or licensee. Subsections (f) and (g) are moved to new §535.57.

The amendments to §535.62(a) delete a reference to acceptable real estate related courses as the term "related course" is defined in new §535.50. The following amendments to §535.62 are proposed as part of the reformation of the section to group similar subjects into the same sections and to clarify the subject matter of each rules. Paragraphs (1) and (2) of subsection (a) are moved from existing §535.62(f)(1) and (2); the first sentence of subsection (b) is moved from §535.62(b); paragraph 5 of subsection (b) is amended to track the terminology used in the Act; subsection (c) is reworded for clarity; paragraphs (3) and (4) of subsection (d) are moved from existing §535.62(d)(9) and (e). Subsections (e) - (g) are moved from other parts of existing §535.62 to put like subject matter together. Existing §535.62(d)(6)(B) regarding courses offered by an alternative delivery method were deleted because IDECC certification (required under proposed §535.62(g)(1) ensures the requirements of that subparagraph and it was therefore redundant. Although the remaining provisions of §535.62 indicate that they were deleted, there were moved to other sections for clarity.

Existing §535.63 was repealed and moved to new §§535.54 - 535.56. Much of new §535.63 is moved from existing §535.64 which addresses accreditation of schools. The renewal period for accreditation of schools is changed from five years to four years in proposed §535.63(b). For purposes of calculation a school's passage rate in §535.63(b)(3), the commission will use a four year period (proposed) instead of a five year period (current). Thus a school's passage rate will be calculated by dividing the number of students affiliated with that school who passed the examination on their first attempt in the four-year period ending on the last day of the previous quarter by the total number of the school's graduates who took the exam for the first time in the same period.

Existing §535.64 is repealed and replaced with new §535.64 which contains the parts of existing §535.64 that deal with obtaining approval to offer a course. There are new course renewal provision in subsections (f) and (g) of proposed new §535.64. A course approval expires four years from the date of approval, and if any school that offers the same course obtains TREC approval to offer the same course, the expiration date remains unchanged. The requirement in existing §535.64 that examination preparation course be submitted to TREC for approval is deleted.

Existing §535.65 is repealed and replaced with new §535.65. The text of new §535.65 comes from existing §535.65 except that it has been rearranged, streamlined and reformatted for clarity and consistency. A new provision in paragraph (2)(D) addresses the requirements for schools which do not maintain an office in the State of Texas. A new provision in paragraph (10) requires a school to provide to students and maintain for commission review instructor and course evaluation for each course. Forms created and approved by the commission must be used. A school is required to maintain records of each student enrolled for a minimum of four years; and the full class file and student enrollment agreements must be retained for at least 24 months following completion.

Existing §535.66 is repealed and replaced with new §535.66. The text of new §535.66 comes from existing §535.66 except that it has been rearranged, streamlined and reformatted for clarity and consistency.

New §535.67 contains the part of existing §535.64 that deals with approval of instructors. The renewal period for instructor approval is changed from five years to two years.

New §535.68 contains the parts of existing §535.64(m) which deal with additional information related to an application for a school, course or instructor; and §535.64(n) which addresses the commission's delegation of authority to staff.

Generally speaking, the amendments and new sections correct typographical errors, reorganize, clarify, and streamline existing rules, and update cites to new laws and codes.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the proposed amendments and new rules are in effect there will be no significant fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments and new rules. There is no significant anticipated economic effect on small businesses, micro-businesses, persons, or local or state employment as a result of implementing the amendments and new rules.

Ms. DeHay also has determined that for each year of the first five years the amendments and new rules are in effect the public benefit anticipated as a result of enforcing the amendments and new rules will be more streamlined, consistent and readable rules.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments and new rules are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101 and Chapter 1102. No other statute, code or article is affected by the proposal.

§535.61. Examinations.

(a) [~~The contents of examinations administered by the commission or by a testing service under contract with the commission are confidential.~~] The following conduct with respect to licensing examinations is prohibited and is grounds to impose disciplinary action against any licensee of the commission or any education provider accredited by the commission or instructor approved by the commission,

and shall further be grounds for disapproval of an application for any license, accreditation, or approval issued by the commission:

(1) obtaining or attempting to obtain specific questions or answers from an applicant, a commission employee or any person hired by or associated with the testing service[~~, for the purpose of using the information to pass an examination or for the purpose of providing the questions or answers to another person who is either an applicant or a potential applicant~~];

(2) removing or attempting to remove questions or answers from an examination site; or

(3) providing or attempting to provide examination questions or answers to another person[~~, knowing the person is an applicant or prospective applicant, or that the person intends to provide the questions or answers to an applicant or potential applicant~~].

(b) - (c) (No change.)

(d) Applicants may use silent, battery-operated, electronic, pocket sized calculators which are nonprogrammable. If a calculator has printout capability, the testing service must approve use of such calculator prior to the examination. Applicants may not use calculators with alphabetic keyboards or communication capabilities.

(e) (No change.)

[~~(f) Notwithstanding Texas Occupations Code §1101.451(f), the commission shall waive the examination of an applicant for a broker license who has been licensed as a broker in this state no more than two years prior to the filing of the application. The commission shall waive the examination of an applicant for a salesperson license who has been licensed in this state as a broker or salesperson no more than two years prior to the filing of the application.~~]

[~~(g) The commission may waive the national portion of the examination of an applicant for a broker or salesperson license if the applicant maintains a license, equivalent to the license being applied for, and has passed a comparable national examination accredited or certified by a nationally recognized real estate regulator association.~~]

§535.62. Acceptable Courses of Study.

(a) Acceptable core real estate courses are those courses prescribed by [~~Texas Occupations Code, Chapter 1101 (the Act),~~] §1101.003 of the Act and the following courses. [~~and by this section. Acceptable real estate related courses are those courses which have been determined to be acceptable by the commission. The commission will periodically publish lists of acceptable real estate related courses.~~]

(1) Promulgated Contract Forms (or equivalent), which shall include but is not limited to unauthorized practice of law, broker-lawyer committee, current promulgated forms, commission rules governing use of forms and case studies involving use of forms.

(2) Residential Inspection for Real Estate Agents (or equivalent), which shall include but is not limited to repair-related contract forms and addenda, inspector and client agreements, inspection standards of practice and standard inspection report form, tools and procedures, electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations) and structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).

(b) Applicants must submit evidence of course completion, such as transcripts or course completion certificates, unless the provider has provided or will provide course completion documentation to the commission. The commission may require an applicant to furnish supporting materials such as course outlines, syllabi and course descriptions [~~in support of credit instruments~~]. The commission may require official transcripts to verify course work. Provided all the requirements of this section are satisfied, the commission shall accept core real estate courses or real estate related courses submitted by an applicant for a [~~real estate~~] broker or [~~real estate~~] salesperson license if the course was offered by any of the following providers:

(1) a school accredited by the commission or by the real estate regulatory agency of another state;

(2) - (4) (No change.)

(5) Texas [~~a~~] professional trade association in the real estate industry.

(c) The commission shall grant classroom credit for qualifying courses as follows: [~~measure classroom hour credits using the following equivalents:~~]

(1) 15 hours of classroom credit will be granted for one [~~One~~] semester hour [~~: 15 hours~~].

(2) 10 hours of classroom credit will be granted for one [~~One~~] quarter hour [~~: 10 hours~~].

(3) 10 hours of classroom credit will be granted for one qualifying [~~One~~] continuing education unit [~~: 10 hours~~].

(d) A core real estate course [~~also~~] must meet each of the following requirements to be accepted for core credit.

(1) The course contained the content required by [~~Texas Occupations Code, Chapter 1101, (the Act),~~] §1101.003 of the Act[,] or this section.

(2) The daily course presentation did not exceed ten hours.

(3) The course was of broader applicability than just techniques or procedures utilized by a particular brokerage or organization.

(4) The course was not awarded credit by an accredited college or university based on life experience or solely by examination.

[~~(3) With the exception of courses conducted by correspondence or by an alternative delivery method such as by computer, the student was present in the classroom for the hours of credit granted by the course provider, or completed makeup in accordance with the requirements of the provider, or by applicable commission rule~~]

[~~(4) For a classroom course, successful completion of a final examination or other form of final evaluation was a requirement for receiving credit from the provider.~~]

[~~(5) For a correspondence course, the course must have been offered by or in association with an accredited college or university, and students receiving credit for the course must pass either:~~]

[~~(A) a proctored final examination administered under controlled conditions to positively identified students and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or~~]

[~~(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks course credit.~~]

[~~(6) If a correspondence course was offered by a proprietary school in association with an accredited college or university, the proprietary school has certified to the commission that the course was offered in accordance with the college or university's curriculum accreditation standards. Using the name of the proprietary school "in association with" the name of the college or university on the course~~

completion certificate or electronic course submission constitutes certification to the commission that the course was offered in compliance with the college or university's curriculum accreditation standards.]

[(7) For a course offered by an alternative delivery method, the course met the following requirements.]

[(A) The course must be certified by a distance learning certification center that is acceptable by the commission.]

[(B) The rationale for the education processes implemented in the course must be based on sound instructional strategies which have been systematically designed and proven effective through educational research and development. The basis and rationale for any proposed instructional approach must be specified in the application for approval. The following types of programs will not be approved:]

[(i) those which consist primarily of text material; or]

[(ii) those which primarily consist of questions similar to those on the state licensing examination.]

[(C) An approved instructor or the provider's coordinator/director shall grade the written course work.]

[(D) Every provider offering an approved course under this subsection shall:]

[(i) ensured that a qualified person is available to answer students' questions or provide assistance as necessary;]

[(ii) satisfy the commission that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course; and]

[(iii) certify students as successfully completing the course only if the student;]

[(I) has completed all instructional modules required to demonstrate mastery of the material;]

[(II) has attended any hours of live instruction and/or testing required for a given course; and]

[(III) has passed either:]

[(-a-) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or]

[(-b-) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks credit.]

[(8) The student must not have completed more than one course with substantially the same course content within a three year period.]

[(9) The course did not primarily concern techniques or procedures utilized by a particular brokerage or organization.]

[(10) For a classroom course, the course was offered in a location conducive to instruction that is separate and apart from the work area, such as a classroom, training room, conference room, or assembly hall.]

(e) A classroom course must meet the following additional requirements to be accepted for core credit.

(1) The course was offered in a location conducive to instruction that is separate and apart from the work area, such as a classroom, training room, conference room, or assembly hall.

(2) The student was present in the classroom for the hours of credit granted by the course provider, or completed makeup in accordance with the requirements of the provider, or by applicable commission rule.

(3) Successful completion of a final examination or other form of final assessment of the student was a requirement for receiving credit from the provider.

(f) A correspondence course must meet the following additional requirements to be accepted for core credit.

(1) The course was offered by or in association with an accredited college or university, and students receiving credit for the course were required to pass either:

(A) a proctored final examination administered under controlled conditions to positively identified students and graded by the instructor or, if the examination was graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks course credit.

(2) If a correspondence course was offered by a school in association with an accredited college or university, the school has certified to the commission that the course was offered in accordance with the college or university's curriculum accreditation standards. Using the name of the school "in association with" the name of the college or university on the course completion certificate or electronic course submission constitutes certification to the commission that the course was offered in compliance with the college or university's curriculum accreditation standards.

(g) A course offered by an alternative delivery method must meet the following additional requirements to be accepted for core credit.

(1) The course was certified by a distance learning certification center that is acceptable to the commission.

(2) An approved instructor or the provider's coordinator/director graded the written course work; and

(3) The provider:

(A) ensured that a qualified person was available to answer students' questions or provide assistance as necessary;

(B) certified students as successfully completing the course only if the student:

(i) completed all instructional modules required to demonstrate mastery of the material;

(ii) attended any hours of live instruction and/or testing required for a given course; and

(iii) passed either:

(I) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(II) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks credit.

~~[(e) Course credits awarded by an accredited college or university for life experience or by examination are acceptable only for real estate related courses.]~~

~~[(f) In addition to the courses of study specified in the Act, §1101.003, the following shall be considered core real estate courses.]~~

~~[(1) Promulgated Contract Forms (or equivalent) shall include but not be limited to unauthorized practice of law, broker-lawyer committee, current promulgated forms, commission rules governing use of forms and case studies involving use of forms.]~~

~~[(2) Residential Inspection for Real Estate Agents (or equivalent) shall include but not be limited to repair-related contract forms and addenda, inspector and client agreement, inspection standards of practice and standard inspection report form, tools and procedures, electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations) and structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).]~~

§535.63. Accreditation of Core Education Schools.

(a) Application for accreditation. A person desiring to offer educational programs or courses of study under approval of the commission pursuant to §1101.301 of the Act shall file an application on the appropriate form approved by the commission and submit the required fee.

(1) Standards for approval of application for accreditation. To be accredited by the commission to offer core courses in real estate, the applicant must satisfy the commission as to the applicant's ability to administer courses with competency, honesty trustworthiness and integrity. If the applicant proposes to employ another person such as an independent contractor to conduct or administer the courses, the other person must meet this standard as if the other person were the applicant. The applicant must also demonstrate that the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis without risk of loss to students attending the school and that the proposed facilities will be adequate and safe for conducting classes. An applicant that is currently accredited will be deemed to meet financial requirements imposed by this subsection once the applicant has provided the statutory bond or other security acceptable to the commission under §1101.301 of the Act if there are no unsatisfied final money judgments against the applicant; otherwise, the application will be subject to the financial review provisions of this section.

(2) Financial review. The commission shall review the financial condition of each applicant for accreditation to determine whether the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis. In making this determination, the commission shall be conservative in the financial assumptions it makes concerning the school's proposed operations and its future cash flows. The applicant shall provide the following information:

(A) business financial statements prepared in accordance with generally accepted accounting principles, which shall include a current statement of financial condition and a current statement of net worth;

(B) on an initial application, a proposed budget for the first year of operation; and

(C) on an initial application, a market survey indicating the anticipated enrollment for the first year of operation.

(3) Approval of application for accreditation. If it determines that the applicant meets the standards for accreditation and has furnished the bond or other acceptable security required by §1101.302 of the Act, the commission shall approve the application and provide a written notice of the accreditation to the applicant. Unless surrendered or revoked for cause, the accreditation will be valid for a period of four years.

(4) Disapproval of application for accreditation. If it determines that an applicant does not meet the standards for accreditation, the commission shall disapprove the application in writing. An applicant may request a hearing before the commission on the disapproval by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Following the hearing, the commission shall issue an order which, in the opinion of the commission, is appropriate in the matter concerned. Venue for any hearing conducted under this section shall be in Travis County. The disapproval and hearing are subject to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and to Chapter 533 of this title (relating to Practice and Procedure).

(b) Renewal of accreditation. No more than six months prior to the expiration of its current accreditation, a school may apply for accreditation for another four year period. Approval or disapproval of an application shall be subject to the standards for initial applications for accreditation, as well as the requirement of §1101.301 of the Act.

(1) For purposes of calculating the exam passage rate of a commission-accredited school, each type of licensing examination that a student takes for the first time will have a school affiliation, unless the last core course taken for the purpose of meeting the education requirements for the type of license was taken at a school that is not accredited by the commission or the course was taken more than two years before the date the student submitted the course to the commission.

(2) The school a student is affiliated with for purposes of this subsection is the school where the student took his or her last core course. If the student's last core course was taken more than two years before that date, the commission will not count the student in calculating the school's exam pass rate.

(3) A school's passage rate will be calculated and published quarterly by dividing the number of students affiliated with that school, as defined in paragraph (2) of this subsection, who passed the examination on their first attempt in the four-year period ending on the last day of the previous quarter by the total number of the school's graduates who took the exam for the first time in the same period. If a school offers courses toward multiple license types, the exam results for that school will be calculated and posted by license type and aggregated into the school's overall passage rate for that period. The passage rate that will be used to determine whether the accreditation standard has been met is the most current aggregate rate published by the commission as of the date the commission receives the timely application for reaccreditation or, if the accreditation expired before being renewed, the most recent rate published by the commission as of the expiration date of the school's accreditation.

(4) In determining whether a school qualifies for reaccreditation based on its examination passage rate, the commission may consider a variety of factors, including the separate passage rates for sales, broker, and inspector applicants and trends within the school's passage rate over the four-year accreditation period.

(c) Payment of annual fee. A school shall pay the fee prescribed by §1101.152(a)(11) of the Act and by §535.101 of this title (relating to Fees) no later than the anniversary of the date of the school's accreditation. At least 30 days prior to the day the fee is due, the commission shall send a written notice to the school to pay the fee, but the

school's obligation to pay the fee is not affected by any failure to receive the notice.

§535.64. Obtaining Approval to Offer a Course.

(a) An applicant shall submit a Course Application form and pay the fee required by §535.101 of this title (relating to Fees) to obtain approval to offer a course. Prior approval is required for another school to offer the same course.

(b) A school shall submit an instructor's manual for each proposed course. The commission may require a copy of the course materials and instructor's manual to be submitted for each previously approved course a school intends to offer. Subsequent providers shall offer the course as originally approved or as revised with the approval of the commission and shall use all materials required in the original or revised course. Each manual must comply with Instructor Manual Guidelines approved by the commission.

(c) The commission is not required to approve a course sooner than 30 days after the filing of an application for course approval.

(d) For the purpose of approval of courses, a correspondence course offered by a school in association with an accredited college or university in accordance with §535.62(g) of this title (relating to Acceptable Courses of Study), is equivalent to a correspondence course offered by an accredited college or university.

(e) Schools may offer a course using an alternative delivery method such as computers if the course satisfies the requirements for such a course contained in §535.62(g) of this title.

(f) A course approval expires four years from the date of approval. A course that has been approved by the commission may be offered by the original applicant until the expiration date, except that courses approved prior to the effective date of this section expire two years after the effective date. If any school other than the original applicant obtains approval from the commission to offer the same course, the expiration date remains unchanged.

(g) Course renewal. No more than six months prior to the expiration of a course approval, a school may obtain a course approval for another four year period. Approval or disapproval of a course shall be subject to the standards for initial course approval.

§535.65. Operation of Core Education Schools.

The following provisions apply to schools accredited by the commission to offer core education programs.

(1) Responsibility of schools. A school is responsible to the commission for the conduct and administration of each course presentation, punctuality of classroom sessions, student attendance records, instructor performance and attendance, examination administration, proper student certification, and certification of records. A school shall establish business hours during which school staff are available for public inquiry and assistance. A school shall ensure that instructors or other persons do not recruit or solicit prospective salespersons or brokers in a classroom during class time.

(2) School facilities.

(A) A school shall ensure that its classroom facilities are adequate for the needs of the school and pose no threat to the health or safety of students.

(B) Except as provided by this section, every school shall be open to the public, and shall advertise all courses publicly so as to encourage reasonably an open enrollment. A school may obtain approval from the commission, however, to hold classes in facilities to which access has been limited by a governmental unit.

(C) If a school maintains an office in the State of Texas, the office must be large enough for maintenance of all records, office equipment, files, telephone equipment, and office space for customer service.

(D) If a school does not maintain a fixed office in this state for the duration of the school's approval to offer courses, the school shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas that the school is required to maintain by these sections. A power-of-attorney designating the resident must be filed with the commission in a form acceptable to the commission.

(3) Instructors.

(A) A school shall select each instructor on the basis of expertise in the subject area of instruction and ability as an instructor. Except as provided by this section, a school may not utilize an instructor unless the instructor has been approved by the commission. A school shall require specialized training or work experience for instructors for specialized subjects such as law, appraisal, investments, or taxation. A school may use as a guest speaker a person who has not been approved as an instructor, provided that no more than a total of three hours of instruction in a 30-hour course are taught by persons who are not approved instructors.

(B) An instructor shall teach a course in substantially the same manner represented to the commission in the instructor's manual or other documents filed with the application for course approval.

(C) A school shall ensure that at the beginning of each examination preparation course, the instructor reads aloud to all students the provisions of §535.61(a) of this title (relating to Examinations).

(D) Schools may request MCE credit be given to instructors of real estate core courses subject to the following guidelines.

(i) The instructors may receive credit for only those portions of the course which they teach by filing a completed Instructor Credit Request.

(ii) The instructors may receive full course credit by attending all of the remainder of the course.

(4) Advertising. The following practices are prohibited:

(A) using any advertising which does not contain the school's name;

(B) representing that the school's program is the only vehicle by which a person may satisfy educational requirement for licensing;

(C) conveying a false impression of the school's size, importance, location, equipment or facilities;

(D) making unsubstantiated claims that the school's programs are superior to any other course of instruction;

(E) promoting the school directly or indirectly as a job placement agency, unless the school is participating in a program recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program; or

(F) making any statement which is misleading, likely to deceive the public, or which in any manner tends to create a misleading impression.

(5) Pre-enrollment agreements, tuition and fees.

(A) Prior to the start of a course, a school shall provide each student with a pre-enrollment agreement signed by a representa-

tive of the school and the student. The agreement must include all of the following information:

(i) the tuition for the course;

(ii) any fees charged by the school for supplies, materials, or books needed in course work, shown in an itemized fashion;

(iii) the school's policy regarding the refund of tuition and other fees, including a statement addressing refund policy when a student is dismissed or withdraws voluntarily;

(iv) attendance requirements;

(v) acceptable makeup procedures, including any applicable time limits and any fees that may be charged for makeup sessions; and

(vi) the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits.

(B) If the school cancels a course, the school shall fully refund all fees collected from students or, at the student's option, the school may credit the student for another course. The school shall inform the commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(C) Any written advertisement by the school that includes a fee charged by the school must display all fees for the course in the same place in the advertisement and with the same degree of prominence.

(6) Course materials.

(A) A school shall update course materials to ensure that current and accurate information is provided to students. The school shall file updated course materials and revisions of the course outline with the commission prior to implementation, and the commission may direct a school to revise the materials further or cease use of materials. The commission may direct that the school withdraw texts.

(B) A school shall provide each student with copies for the student's permanent use of any printed material which is the basis for a significant portion of the course. The school shall provide ample space on handouts for notetaking or completion of any written exercises.

(7) Presentation of courses.

(A) A school shall present core real estate courses prescribed by §1101.003 of the Act and real estate related courses accepted by the commission in no less than 30 classroom hours of instruction. The school shall advertise and schedule a course for the full clock hours of time for which credit is awarded.

(B) A school may give one hour of credit for a minimum of 50 clock minutes of actual classroom session time. A school shall provide a break of at least 20 minutes to be given at least every two hours. While a school is expected to ensure that each student is present in the classroom for the hours of time for which credit is awarded, this section is not intended to penalize students who must leave the classroom for brief periods of time for personal reasons.

(8) Course examinations.

(A) A school shall administer an examination approved by the commission in each course as a component of determining successful completion of a course of study. A school may not permit a student to take a final examination prior to the completion of any makeup required by this section. In the event of failure of a course final examination, a school may permit a student to retake a final examination once after at least a seven day waiting period and completion of additional course work prescribed by the school. A school shall require a student who fails the examination a second time to retake the course. A school shall require makeup final examinations to be completed within 90 days of the termination of the original class or report the students who do not timely complete the examination requirement as dropped from the class with no credit.

(B) Except in the case of math courses, which require a minimum of 20 questions, a school shall use final examinations consisting of at least 60 questions with an unweighted passing score of 70%. A school shall revise final course examinations for active courses at least annually and shall furnish the commission copies of all revisions. Each of the subjects required by the Act or Rules for a core course must be covered in the exam of that course. A school shall ensure that an examination proctor who is either a member of the school staff or faculty is present with the class during all regularly scheduled final course examinations.

(9) Course credit and records.

(A) Within ten days following the completion of other than an alternative delivery method course or correspondence course, a school shall provide the commission with a class roster in a format approved by the commission. For an alternative delivery method course or correspondence course, a school shall provide a roster of those students completing the course within 10 days after the end of the month in which the student completed the course. The listing of students must be numbered and in alphabetical order, with each student's last name shown first, and must show after each student's name the final grade of either passed, failed, incomplete, or dropped, in language or symbols that can be correlated with these categories. The school shall explain any other grade concisely but clearly. The school shall list all instructors used in the course on the roster.

(i) "Passed" must be limited to those students who attended all of the scheduled classes or completed acceptable makeup and who successfully passed the final course examination based on passing standards approved by the commission.

(ii) "Failed" must be limited to those students who had acceptable classroom attendance but failed the final course examination. If, however, the school permits the student to retake the examination in accordance with paragraph (8) of this section, the first failure must be reported as an incomplete grade.

(iii) "Incomplete" must be limited to those students who met the attendance requirements, but did not take the final course examination; those who attended at least two-thirds of the scheduled course hours but did not complete acceptable makeup; or those who fail the final course examination but will be permitted to take a second examination. If a student is reported incomplete and later completes acceptable makeup and the final examination, the school shall file a supplemental report with the commission giving the student's name and final grade report and using the same format and course data as the original class report. The school shall file a separate supplemental report for each individual class but may include more than one student on the report if all students were in the same original class.

(iv) "Dropped" must be limited to those students who missed more than one-third of the scheduled class in which they were originally enrolled; those who voluntarily terminated their enrollment; or those whose enrollment was terminated for cause by a school director.

(B) A school may permit a student who attends at least two-thirds of a scheduled course to complete makeup work to satisfy

attendance requirements. Acceptable makeup procedures are the attendance in the corresponding class sessions in a subsequent offering of the same course or the supervised presentation by audio or video recording of the class sessions actually missed. A school shall require all class makeup sessions to be completed within 90 days of the completion of the original course, or the student must be considered dropped with no credit for the course. A member of the school's staff must approve the makeup procedure to be followed. A student attending less than two-thirds of the originally scheduled course must automatically be dropped from the course without credit and reported as dropped. Dropped status may not be changed by makeup sessions, and any hours accumulated may not be transferred to any other course.

(C) A school shall issue to the students successfully completing a course of instruction an official certificate which reflects the school's name, branch, course title, course numbers, and the number of classroom hours (or other recognized educational unit) involved in the course. All core course certificates must show the statutory core course title or other identification as prescribed by the commission. Certificates also must show the date of issuance and be signed by an official of the school, or if the certificate is computer printed, the school logo may be substituted for the signature. Letters or other official communications also may be provided to students for submission to the commission as evidence of satisfactory completion of the course. Such letters must fully reflect the school name, the course title and number, educational units, and be dated and signed by an official of the school, or if the letter is computer printed, the school logo may be substituted for the signature. A school shall maintain adequate security for completion certificates and letters. Compliance with this requirement will be determined by the commission during all school audits. A school may withhold a student's certificate of completion of a course until the student has fulfilled the student's financial obligation to the school.

(D) A school shall maintain records of each student enrolled in any course for a minimum of four years. The full class file and student enrollment agreements must be retained for at least 24 months following completion of the class.

(E) A school shall maintain financial records sufficient to reflect at any time the financial condition of the school. A school's financial statement and balance sheets must be available for audit by commission personnel, and the commission may require presentation of financial statements or other financial records.

(10) Instructor and Course Evaluations. A school shall provide instructor and course evaluation forms created and approved by the commission for completion by students in every course. The school shall file in the school records any comments by the school's management relevant to instructor or course evaluations. On demand by the commission the school shall produce instructor and course evaluation forms for inspection.

(11) Changes in Ownership or Operation. A school shall obtain the approval of the commission in advance of any material change in the operation of the school, including but not limited to, ownership, location of main office and any other locations where courses are offered, management, and course formats. A request for approval of a change of ownership will be considered as if each proposed new owner had applied for accreditation of the school, and each new owner must meet the standards imposed by §535.63 of this title (relating to Accreditation of Core Education Schools). A school requesting approval of a change in ownership shall provide all of the following information or documents to the commission:

(A) the proportion of ownership of each proposed new owner;

(B) a professional resume of each proposed new owner who would hold at least a 10% interest in the school;

(C) business financial statements of each proposed new owner who would hold at least a 10% interest in the school, which shall include the statement of financial condition and statement of net worth for the accounting period in which the application is made, prepared in accordance with generally accepted accounting principles;

(D) a statement of any proposed changes in the operation or location of the school;

(E) a new bond in the amount of $20,000 for the proposed new owner(s), a statement from the bonding company indicating that the former bond will transfer to the proposed new owner(s), or other security acceptable to the commission under §1101.302 of the Act;

(F) a completed Education Provider Application reflecting all required information for the proposed new owner(s); and

(G) a completed Principal Information Form for each proposed new owner who would hold at least a 10% interest in the school.

§535.66. Core Education Providers: Audits, Investigations, and Enforcement Actions.

(a) Audits. Schools are subject to audit by commission employees. Commission employees may conduct on-site audits without prior notice to the school, and may enroll and attend a course without identifying themselves as employees of the commission. An audit report indicating noncompliance with the Act or Rules will be treated as a written complaint against the school or instructor concerned and will be referred to the standards and enforcement services division of the commission for appropriate resolution.

(b) Complaints, investigations and hearings. The commission shall investigate complaints against schools or instructors which allege acts constituting violations of these sections. Complaints must be in writing, and the commission may not initiate an investigation or take action against a school or instructor based on an anonymous complaint. Complaints against a school or instructor received by any division of the commission will be referred to the enforcement division for appropriate resolution. Commission employees may file written complaints against a school or instructor if course completion rosters or other documents filed with the commission provide reasonable cause to believe a violation of these sections has occurred. The school or instructor named in the complaint will be provided with a copy of the complaint. Proceedings against schools and instructors will be conducted in the manner required by §1101.657 of the Act, the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section will be in Travis County.

(c) Grounds for disciplinary action against a school. The commission may issue a reprimand, place on probation, suspend or revoke accreditation of a school, or impose an administrative penalty when it has been determined that the school has been guilty of engaging in any of the following acts:

(1) procuring or attempting to procure approval for a school, course or instructor by fraud, misrepresentation or deceit, or by making a material misrepresentation of fact in an application filed with the commission;

(2) making a false representation to the commission, either intentionally or negligently, that a person had attended a course or a portion of a course for which credit was awarded, that a person had

completed an examination, or that the person had completed any other requirement for course credit;

(3) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(4) failing to provide within 15 days information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(5) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against the school or instructor;

(6) disregarding or violating a provision of these sections or of the Act; or

(7) failing to maintain sufficient financial resources to continue operation of the school without placing students at risk of financial loss.

(d) The existence of any of the following conditions shall constitute prima facie evidence that a school's financial condition is insufficient for continuing operation:

(1) nonpayment of a liability when due, if the balance due is greater than 5% of the school's current assets in the current or prior accounting period;

(2) nonpayment of three or more liabilities when due, in the current or prior accounting period, regardless of the balance due for each liability;

(3) a pattern of nonpayment of liabilities when due, in two or more accounting periods, even if the liabilities ultimately are repaid;

(4) a current ratio of less than 1.75 for the current or prior accounting period, this ratio being total current assets divided by total current liabilities;

(5) a quick ratio of less than 1.60 for the current or prior accounting period, this ratio being the sum of all cash equivalents, marketable securities, and net receivables divided by total current liabilities;

(6) a cash ratio of less than 1.40 for the current or prior accounting period, this ratio being the sum of cash equivalents and marketable securities divided by total current liabilities;

(7) a debt ratio of more than .40 for the current or prior accounting period, this ratio being total liabilities divided by total assets;

(8) a debt-to-equity ratio of greater than .60 for the current or prior accounting period, this ratio being total liabilities divided by owners' or shareholders' equity;

(9) a final judgment obtained against the school for nonpayment of a liability which remains unpaid more than 30 days after becoming final; or

(10) execution of a writ of garnishment on any of the assets of the school.

(e) Grounds for disciplinary action against instructor. The commission may issue a reprimand, place on probation, suspend or revoke approval of an instructor, or impose an administrative penalty when it has been determined that the instructor has been guilty of engaging in any of the following acts:

(1) making a false representation to the commission, either intentionally or negligently, that a person had attended a course or a portion of a course for which credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for course credit;

(2) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(3) failing to provide within 15 days information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(4) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against a school or instructor; or

(5) violating or disregarding any provision of the Act or a rule of the commission.

(f) Probation. An order of suspension or revocation issued under this section may be probated upon reasonable terms and conditions as determined by the commission.

§535.67. Approval of Instructors.

(a) Standards for instructor approval. The application for commission approval of an instructor must be filed on a form approved by the commission. To be approved as an instructor, a person must satisfy the commission as to the person's competency in the subject matter to be taught and ability to teach effectively. Each instructor must also possess one of the following qualifications:

(1) a college degree in the subject area or five years of professional experience in the subject area and three years experience in teaching or training; or

(2) the equivalent of paragraph (1) of this subsection as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area.

(b) Approval of application. If the commission determines that the applicant meets the standards for instructor approval, the commission shall approve the application and provide a written notice of the approval to the applicant. Unless surrendered or revoked for cause, the approval will be valid for a period of two years.

(c) Disapproval of application. The commission may disapprove an application for approval of an instructor for failure to meet the standard imposed by subsection (a) of this section, failure to satisfy the commission as to the applicant's honesty, trustworthiness or integrity, or for any reason which would be a ground to suspend or revoke a real estate license. If an application is disapproved, the commission shall provide written notice to the applicant detailing the basis of the decision. An applicant may request a hearing before the commission by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Venue for any hearing conducted under this section is in Travis County. Appeals from application disapprovals will be conducted in the manner required by §1101.364 of the Act. Hearings are subject to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and to Chapter 533 of this title (relating to Practice and Procedures).

(d) Subsequent application for instructor approval. No more than six months prior to the expiration of the current approval, an instructor may apply for approval for another two-year period.

§535.68. Additional Information Related to an Application.

(a) The commission may request an applicant for accreditation of a school, approval of a course, or approval as an instructor to provide additional information related to the application, and the commission may terminate the application without further notice if the applicant

fails to provide the information within 60 days after the request was mailed.

(b) Delegation of authority. The commission may authorize its director of education and licensing services division or that person's designee to determine whether applications for schools, courses, and instructors should be approved.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2010.

TRD-201005255
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 465-3926

♦ ♦ ♦

SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §§535.63 - 535.66

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Real Estate Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Real Estate Commission (TREC or the commission) proposes the repeal of §535.63, concerning Education and Experience Requirements for a License; §535.64, concerning Accreditation of Schools and Approval of Courses and Instructors; §535.65, concerning Changes in Ownership or Operation of School; Presentation of Courses, Advertising, and Records; and §535.66, concerning Payment of Annual Fee, Audits, Investigations and Enforcement Actions.

Existing §535.63 is proposed for repeal and language is moved to new §§535.54 - 535.56. Much of new §535.63 is moved from existing §535.64 which addresses accreditation of schools.

Existing §535.64 is proposed for repeal and replaced with new §535.64 which contains the parts of existing §535.64 that deal with obtaining approval to offer a course.

Existing §535.65 is proposed for repeal and replaced with new §535.65. The text of new §535.65 comes from existing §535.65 except that it has been rearranged, streamlined and reformatted for clarity and consistency.

Existing §535.66 is repealed and replaced with new §535.66. The text of new §535.66 comes from existing §535.66 except that it has been rearranged, streamlined and reformatted for clarity and consistency.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the proposed repeals are in effect there will be no significant fiscal implications for the state or for units of local government as a result of enforcing or administering the repeals. There is no significant anticipated economic effect on small businesses, micro-businesses, persons, or local or state employment as a result of implementing the repeals.

Ms. DeHay also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be more streamlined, consistent and readable rules.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeals are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101 and Chapter 1102. No other statute, code or article is affected by the proposal.

§535.63. Education and Experience Requirements for a License.

§535.64. Accreditation of Schools and Approval of Courses and Instructors.

§535.65. Changes in Ownership or Operation of School; Presentation of Courses, Advertising, and Records.

§535.66. Payment of Annual Fee, Audits, Investigations and Enforcement Actions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2010.

TRD-201005254
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 465-3926

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 99. GENERAL PROVISIONS

SUBCHAPTER C. MISCELLANEOUS

37 TAC §99.41

The Texas Youth Commission (TYC) proposes new §99.41, concerning response to ombudsman reports. The new rule establishes procedures for TYC to review and comment on certain types of reports issued by the Office of the Independent Ombudsman for TYC. The new rule also contains procedures for TYC to eliminate or expedite its review and comment process

for reports that address serious or flagrant circumstances, as defined in Human Resources Code §64.055.

Janie Ramirez Duarte, Acting Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

Toysha Martin, General Counsel, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be compliance with recently enacted legislation, as well as enhanced transparency concerning communications between TYC and the Office of the Independent Ombudsman.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to policy.proposals@tyc.state.tx.us.

The new section is proposed under: (1) Human Resources Code §61.034, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions; and (2) Human Resources Code §64.058, which requires TYC to adopt rules to establish procedures for TYC to review and comment on reports of the Office of Independent Ombudsman.

The proposed rule implements Human Resources Code, §61.034.

§99.41. Response to Ombudsman Reports.

(a) Purpose. The purpose of this rule is to establish procedures for the Texas Youth Commission (TYC) to review and comment on reports issued by the Office of the Independent Ombudsman for the Texas Youth Commission (OIO).

(b) Applicability. This rule applies to the following types of reports issued by OIO:

(1) quarterly reports issued under Human Resources Code §64.055(a);

(2) reports concerning serious or flagrant circumstances issued under Human Resources Code §64.055(b); and

(3) any other formal reports containing findings and making recommendations concerning systemic issues that affect TYC.

(c) Prior to Publication of an OIO Report.

(1) Upon receipt of an OIO report prior to the report's publication, the TYC executive director or his/her designee will:

(A) assign the report for review and comment to appropriate staff members; and

(B) draft a formal response to the OIO report.

(2) TYC's formal response to the draft report shall be provided to OIO no later than 14 days after receipt of the draft report.

(3) If the OIO report addresses serious or flagrant circumstances as described in Human Resources Code §64.055(b), TYC shall expedite or eliminate its review of and comment on the report. The TYC executive director or his/her designee will:

(A) determine whether to expedite or eliminate the review and comment process;

(B) within one business day, notify OIO of TYC's intention to expedite or eliminate the review and comment process; and

(C) in cases of expedited review, provide TYC's formal comments to OIO no later than the 3rd business day after the date TYC receives the report.

(d) After Publication of an OIO Report.

(1) Upon publication of an OIO report, the TYC executive director or his/her designee will determine whether TYC will make comments on the published report.

(2) In cases where TYC will make comments on a published OIO report, TYC's formal response shall be submitted to OIO no later than the 30th day after the date the report is published.

(3) If the published report addresses serious or flagrant circumstances as described in Human Resources Code §64.055(b), TYC shall follow the procedures and deadlines established in subsection (c)(3) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005302
Cheryln K. Townsend
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 424-6166

♦ ♦ ♦

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.14

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §145.14 concerning action upon review; release to mandatory supervision. The amendments to §145.14 are proposed to clarify the legal time frame during which the TDCJ-Parole Division shall provide written notice to an eligible offender of future consideration for release to mandatory supervision under §508.149, Government Code, in order to provide an offender the opportunity to submit information to the voting panel.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to bring the rules into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. No regulatory flexibility analysis required by HB 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §§508.149, 508.0441, and 508.045, Government Code. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision. Sections 508.0441 and 508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§145.14. Action Upon Review; Release to Mandatory Supervision.

(a) (No change.)

(b) If TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case will be processed as follows: [~~shall be referred to a parole panel within 30 days of the offender's projected release date for consideration for release to mandatory supervision.~~]

(1) the offender shall be provided written notice of the discretionary mandatory review and shall have 30 days from the receipt of the notice to submit, in writing, information to the board; and

(2) after the expiration of the 30 day time period, the case shall be referred to a parole panel who will consider the case for release to mandatory supervision no earlier than 60 days of the offender's projected release date.

(c) Upon considering a case for release to mandatory supervision, a parole panel may:

(1) defer for request and receipt of further information;

(2) vote DMS Month/Year, deny release to mandatory supervision and set the next mandatory supervision review date [~~for review on a future specific month and year. The next mandatory supervision review date shall be set~~] one year from the panel decision date [~~and shall constitute the subsequent projected release date~~]; or

(3) vote RMS, release to mandatory supervision.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 7, 2010.

TRD-201005197
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 406-5388

♦ ♦ ♦

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 273. HEALTH SERVICES

37 TAC §273.5

The Commission on Jail Standards proposes an amendment to §273.5, concerning Mental Disabilities/Suicide Prevention Plan to allow county jails to utilize either the CARE or CCQ check.

Adan Munoz, Executive Director, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Munoz has determined that for each year of the first five years the amendment is in effect the public benefits anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§273.5. Mental Disabilities/Suicide Prevention Plan.

(a) - (b) (No change.)

(c) Mental History Check. Each jail shall:

(1) check each inmate upon intake into the jail against the Department of State Health Services CARE or CCQ system to determine if the inmate has previously received state mental healthcare, unless the inmate is being housed as an out of state inmate or a federal inmate on a contractual basis;

(2) maintain documentation to be available at the time of inspection showing that information for each inmate designated in paragraph (1) of this subsection was submitted for CARE or CCQ system checks; and

(3) include any relevant mental health information on the mental health screening instrument and, if sentenced to the Department of Criminal Justice, on the Uniform Health Status form.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 10, 2010.

TRD-201005263
Brandon S. Wood
Assistant Director
Texas Commission on Jail Standards
Earliest possible date of adoption: October 24, 2010
For further information, please call: (512) 463-8236

♦ ♦ ♦

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.14

The Texas Board of Pardons and Paroles withdraws the proposed amendment to §145.14 which appeared in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8302).

Filed with the Office of the Secretary of State on September 7, 2010.

TRD-201005196
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: September 7, 2010
For further information, please call: (512) 406-5388

♦ ♦ ♦

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 167. DISPUTE RESOLUTION PROCESSES APPLICABLE TO CERTAIN CONSUMER HEALTH BENEFIT DISPUTES

The State Office of Administrative Hearings (SOAH) adopts new Chapter 167, Subchapter A, §167.1 and §167.3; Subchapter B, §167.51; Subchapter C, §§167.101, 167.103, 167.105, 167.107, and 167.109; Subchapter D, §167.151; and Subchapter E, §§167.201, 167.203, 167.205, 167.207, and 167.209, concerning Dispute Resolution Processes Applicable to Certain Consumer Health Benefit Disputes. Sections 167.3 and 167.51 are adopted with changes to the proposed text, as published in the May 7, 2010, issue of the *Texas Register* (35 TexReg 3562). Sections 167.1, 167.101, 167.103, 167.105, 167.107, 167.109, 167.151, 167.201, 167.203, 167.205, 167.207, and 167.209 are adopted without changes to the proposed text and will not be republished.

The new chapter establishes procedures for the appointment of mediators and special judges to conduct dispute resolution proceedings prescribed by Insurance Code, Chapter 1467, added by the 81st Legislative Session, under H.B. 2256, effective June 19, 2009.

New Subchapter A is entitled General and contains §167.1 and §167.3. Section 167.1 sets forth the purpose and scope for the new chapter. Section 165.3 provides the definitions of words and terms used in the new chapter in addition to definitions contained in Insurance Code, §1467.001 and is adopted with changes. The changes are made to correct the wording in definition number (2) from "Out-of Network" to "Health Insurance" to conform to the wording that the Texas Department of Insurance uses for the name of the mediation request form. The changes also correct the citation to the Texas Department of Insurance's website from "http://www.tdi.state.tx.us/consumer/documents/mediationform.pdf" to "http://www.tdi.state.tx.us/consumer/cpmmediation.html."

New Subchapter B is entitled Initiating Appointment of a Mediator and contains §167.51. This section provides which forms the Texas Department of Insurance shall file with SOAH to initiate the appointment of a mediator and is adopted with changes. The changes are made to correct the name of the form from "Out-of-Network Benefit" Mediation Request Form, to "Health Insurance" Mediation Request Form.

New Subchapter C is entitled Mediator and contains §§167.101, 167.103, 167.105, 167.107, and 167.109. Section 167.101 identifies the requirements for appointment as a mediator by SOAH, and the procedures the parties must follow when choosing a person other than a mediator appointed by SOAH; §167.103 sets forth how the mediator roster will be compiled, posted, and maintained by SOAH, how the mediators will be grouped and listed on the roster, and what must be filed by a mediator who wishes to be appointed; §167.105 sets forth when the roster will be updated, how a mediator may be withdrawn or removed from the roster, and specifies that mediators are responsible for fees and payments from parties; §167.107 provides the guidelines SOAH will use to determine which mediator will be appointed based on the geographic region of where the mediation will be held; and §167.109 identifies the duties and responsibilities of the mediator.

New Subchapter D is entitled Post Mediation Reports and contains §167.151. This section sets forth the timeline for the mediator to submit reports after the conclusion of the mediation, identifies to whom the reports must be sent, and includes the required content of the reports following successful and unsuccessful mediations.

New Subchapter E is entitled Special Judges and contains §§167.201, 167.203, 167.205, 167.207, and 167.209. Section 167.201 identifies the required qualifications of special judges; §167.203 sets forth the guidelines to be followed by the Chief Judge for entering an order of referral to a special judge and the required content of the order of referral upon receiving a report of an unsuccessful mediation; §167.205 sets forth how the special judge roster will be compiled, posted, and maintained by SOAH, identifies the qualifications for special judges under this chapter, and specifies the information a special judge must submit in order to be placed on the roster; §167.207 provides the guidelines the Chief Judge or the Chief Judge's designee will use to appoint special judges; and §167.209 sets forth when the roster will be updated, how a special judge will be withdrawn, or request to be withdrawn from the roster, and specifies that special judges are responsible for fees and payments from parties.

No comments were received during the 30-day comment period.

SUBCHAPTER A. GENERAL

1 TAC §167.1, §167.3

The new rules are adopted under Insurance Code, Chapter 1467, §1467.003, which requires SOAH to adopt rules as necessary to implement its respective powers and duties under this chapter, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The new chapter affects the Government Code, Chapters 2001 and 2003, and Insurance Code, Chapter 1467.

§167.3. Definitions.
The definitions contained in Insurance Code, §1467.001 shall apply in addition to the definitions set forth as follows.

(1) Chief Judge--The chief administrative law judge of SOAH.

(2) Health Insurance Mediation Request--The completed form described in and available at http://www.tdi.state.tx.us/consumer/cpmmediation.html.

(3) SOAH--The State Office of Administrative Hearings.

(4) Special Judge--A person having the qualifications prescribed in Texas Civil Practice and Remedies Code, Chapter 151.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2010.

TRD-201005245
Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
Effective date: September 28, 2010
Proposal publication date: May 7, 2010
For further information, please call: (512) 475-4931

♦ ♦ ♦

SUBCHAPTER B. INITIATING APPOINTMENT OF A MEDIATOR

1 TAC §167.51

The new rule is adopted under Insurance Code, Chapter 1467, §1467.003, which requires SOAH to adopt rules as necessary to implement its respective powers and duties under this chapter, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The new chapter affects the Government Code, Chapters 2001 and 2003, and Insurance Code, Chapter 1467.

§167.51. Forms.
In order to initiate the appointment of a mediator through SOAH, the Texas Department of Insurance shall file with SOAH a completed Request to Docket Case form and a copy of the enrollee's Health Insurance Mediation Request form.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2010.

TRD-201005246
Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
Effective date: September 28, 2010
Proposal publication date: May 7, 2010
For further information, please call: (512) 475-4931

♦ ♦ ♦

SUBCHAPTER C. MEDIATOR

1 TAC §§167.101, 167.103, 167.105, 167.107, 167.109

The new rules are adopted under Insurance Code, Chapter 1467, §1467.003, which requires SOAH to adopt rules as necessary to implement its respective powers and duties under this chapter, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The new chapter affects the Government Code, Chapters 2001 and 2003, and Insurance Code, Chapter 1467.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2010.

TRD-201005247
Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
Effective date: September 28, 2010
Proposal publication date: May 7, 2010
For further information, please call: (512) 475-4931

♦ ♦ ♦

SUBCHAPTER D. POST MEDIATION REPORTS

1 TAC §167.151

The new rule is adopted under Insurance Code, Chapter 1467, §1467.003, which requires SOAH to adopt rules as necessary to implement its respective powers and duties under this chapter, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The new chapter affects the Government Code, Chapters 2001 and 2003, and Insurance Code, Chapter 1467.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2010.

TRD-201005248
Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
Effective date: September 28, 2010
Proposal publication date: May 7, 2010
For further information, please call: (512) 475-4931

♦ ♦ ♦

SUBCHAPTER E. SPECIAL JUDGES

1 TAC §§167.201, 167.203, 167.205, 167.207, 167.209

The new rules are adopted under Insurance Code, Chapter 1467, §1467.003, which requires SOAH to adopt rules as necessary to implement its respective powers and duties under this chapter, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The new chapter affects the Government Code, Chapters 2001 and 2003, and Insurance Code, Chapter 1467.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2010.

TRD-201005249
Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
Effective date: September 28, 2010
Proposal publication date: May 7, 2010
For further information, please call: (512) 475-4931

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL SUBCHAPTER B. QUARANTINE REQUIREMENTS

4 TAC §20.12, §20.13

The Texas Department of Agriculture (the department) adopts amendments to §20.12 and §20.13, concerning suppressed areas and functionally eradicated areas, respectively, under the department's cotton pest control program, without changes to the proposal published in the August 6, 2010, issue of the *Texas Register* (35 TexReg 6743). Amendments are adopted to reclassify the El Paso/Trans Pecos (EP/TP), Northern High Plains (NHP), Northern Rolling Plains (NRP), Northwest Plains (NWP), Panhandle, Permian Basin (PB), Southern High Plains/Caprock (SHP/C), St. Lawrence (SL), and Western High Plains (WHP) Boll Weevil Eradication Zones (Eradication zones) from the list of suppressed areas in §20.12 to the list of functionally eradicated areas in §20.13. The amendments are made to make the sections consistent with the declaration of the zones as functionally eradicated by the Commissioner of Agriculture on July 22, 2010.

Once a zone has achieved functionally eradicated status, the zone can become re-infested with boll weevil from outside areas. Elimination of boll weevil re-infestations can be expensive. In areas of the southeastern United States, the control to stop re-infestations ranged from $20,000 to over one million dollars, with an average cost of $125,000 per outbreak. The designation of a zone as functionally eradicated invokes quarantine restrictions on the movement of regulated articles from a quarantined area into a restricted area and invokes the quarantine restrictions on the movement of regulated articles from a suppressed area into a functionally eradicated area; these restrictions help protect the zone from boll weevil re-infestation. It also removes restrictions that affect movement of regulated articles from areas that the adopted amendments reclassify as functionally eradicated into areas that already had been classified as functionally eradicated. Since the areas listed above do not present a risk of infesting the functionally eradicated areas of the state, they were eligible for a functionally eradicated status.

In accordance with §20.12, the Texas Boll Weevil Eradication Foundation (the foundation) recommended that the department declare the EP/TP, NHP, NRP, NWP, Panhandle, PB, SHP/C, SL, and WHP Eradication zones as functionally eradicated. The foundation provided scientific documentation acceptable to the department which indicates that movement of regulated articles into these zones presents a threat to the success of boll weevil eradication. The data provided indicates that boll weevil numbers for the 2009 cotton crop year satisfy the requirement in §20.1, that in a functionally eradicated area the boll weevil population must be equal to or less than an average of 0.001 boll weevils per trap per week for the cotton growing season, as measured by the foundation. Consequently, the Commissioner of Agriculture declared the EP/TP, NHP, NRP, NWP, Panhandle, PB, SHP/C, SL, and WHP Eradication zones as functionally eradicated on July 22, 2010.

No comments were received on the proposal.

The amendments to §20.12 and §20.13 are adopted in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; and §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and movement of regulated articles into and out of a quarantined area.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2010.

TRD-201005264
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 30, 2010
Proposal publication date: August 6, 2010
For further information, please call: (512) 463-4075

♦ ♦ ♦

PART 13. PRESCRIBED BURNING BOARD

CHAPTER 227. CERTIFICATION, RECERTIFICATION, RENEWAL AND RECORDS

The Texas Prescribed Burning Board adopts amendments to Title 4, Part 13, Chapter 227, Subchapter B, §227.16, concerning Responsibilities of Certified Prescribed Burn Managers; and new Subchapter C, §227.20, concerning Records, without changes to the proposed text as published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4548).

The adopted amendments change the title of the chapter to "Certification, Recertification, Renewal and Records;" and amend §227.16(b) so that the rules pertaining to completion of Continuing Education Units are consistent with the two-year term of certification established by the 81st Texas Legislature, Regular Session, in Senate Bill 1016, codified at §153.048(c) of the Natural Resources Code. In addition, new §227.20 adds recordkeeping requirements which will aid the department in the exercise of its enforcement authority granted to the department by the 81st Texas Legislature, Regular Session, in Senate Bill 1016, codified at §§153.101 - 153.104 of the Natural Resources Code.

No comments were received on the proposal.

SUBCHAPTER B. CONTINUING EDUCATION FOR RECERTIFICATION/RENEWAL OF CERTIFICATION

4 TAC §227.16

The amendments to §227.16 are adopted under the Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning, and standards for certification, recertification, and training for prescribed burn managers; and §153.048 of the Natural Resources Code, as amended by Senate Bill 1016, which provides that a prescribed burn manager certification is for a two-year period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 7, 2010.

TRD-201005207
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Effective date: September 27, 2010
Proposal publication date: June 4, 2010
For further information, please call: (512) 463-4075

♦ ♦ ♦

SUBCHAPTER C. RECORDKEEPING

4 TAC §227.20

New §227.20 is adopted under the Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning, and standards for certification, recertification, and training for prescribed burn managers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 7, 2010.

TRD-201005208
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Effective date: September 27, 2010
Proposal publication date: June 4, 2010
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 53. HOME PROGRAM RULE

SUBCHAPTER A. GENERAL

10 TAC §§53.1 - 53.9

The Texas Department of Housing and Community Affairs adopts the repeal of 10 TAC Chapter 53, Subchapter A, §§53.1 - 53.9, concerning the HOME Program Rule, without changes to the proposal as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6143) and will not be republished. This repeal is adopted in order to consolidate and simplify the existing rules for the HOME Program.

A public hearing to receive input on the proposed rules was held on August 3, 2010 and written comments on the proposed repeal were accepted by mail, e-mail, and facsimile through August 9, 2010.

No comments were received concerning the proposed repeal.

The Board approved the final order adopting this repeal on September 9, 2010.

The repeal of the sections is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005303
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER B. ALLOCATION OF FUNDS

10 TAC §53.20, §53.21

The Texas Department of Housing and Community Affairs adopts the repeal of 10 TAC Chapter 53, Subchapter B, §53.20 and §53.21, concerning Allocation of Funds, without changes to the proposal as published in the July 16, 2010, issue of the

Texas Register (35 TexReg 6143) and will not be republished. This repeal is adopted in order to consolidate and simplify the existing rules for the HOME Program.

A public hearing to receive input on the proposed rules was held on August 3, 2010 and written comments on the proposed repeal were accepted by mail, e-mail, and facsimile through August 9, 2010.

No comments were received concerning the proposed repeal.

The Board approved the final order adopting this repeal on September 9, 2010.

The repeal of the sections is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005305
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER C. PROGRAM ACTIVITIES

10 TAC §§53.30 - 53.37

The Texas Department of Housing and Community Affairs adopts the repeal of 10 TAC Chapter 53, Subchapter C, §§53.30 - 53.37, concerning Program Activities, without changes to the proposal as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6144) and will not be republished. This repeal is adopted in order to consolidate and simplify the existing rules for the HOME Program.

A public hearing to receive input on the proposed rules was held on August 3, 2010 and written comments on the proposed repeal were accepted by mail, e-mail, and facsimile through August 9, 2010.

No comments were received concerning the proposed repeal.

The Board approved the final order adopting this repeal on September 9, 2010.

The repeal of the sections is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005307
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER D. APPLICATION REQUIREMENTS AND PROCEDURES

10 TAC §§53.40 - 53.49

The Texas Department of Housing and Community Affairs adopts the repeal of 10 TAC Chapter 53, Subchapter D, §§53.40 - 53.49, concerning Application Requirements and Procedures, without changes to the proposal as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6144) and will not be republished. This repeal is adopted in order to consolidate and simplify the existing rules for the HOME Program.

A public hearing to receive input on the proposed rules was held on August 3, 2010 and written comments on the proposed repeal were accepted by mail, e-mail, and facsimile through August 9, 2010.

No comments were received concerning the proposed repeal.

The Board approved the final order adopting this repeal on September 9, 2010.

The repeal of the sections is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005309
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER E. COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)

10 TAC §53.50

The Texas Department of Housing and Community Affairs adopts the repeal of 10 TAC Chapter 53, Subchapter E, §53.50, concerning Community Housing Development Organizations (CHDOs), without changes to the proposal as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6145) and will not be republished. This repeal is adopted in order

to consolidate and simplify the existing rules for the HOME Program.

A public hearing to receive input on the proposed rules was held on August 3, 2010 and written comments on the proposed repeal were accepted by mail, e-mail, and facsimile through August 9, 2010.

No comments were received concerning the proposed repeal.

The Board approved the final order adopting this repeal on September 9, 2010.

The repeal of the section is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005311
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER F. AWARDS AND CONTRACTS

10 TAC §§53.70 - 53.74

The Texas Department of Housing and Community Affairs proposes the repeal of 10 TAC Chapter 53, Subchapter F, §§53.70 - 53.74, concerning Awards and Contracts, without changes to the proposal as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6145) and will not be republished. This repeal is adopted in order to consolidate and simplify the existing rules for the HOME Program.

A public hearing to receive input on the proposed rules was held on August 3, 2010 and written comments on the proposed repeal were accepted by mail, e-mail, and facsimile through August 9, 2010.

No comments were received concerning the proposed repeal.

The Board approved the final order adopting this repeal on September 9, 2010.

The repeal of the sections is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005314
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER G. LOANS AND CONTRACT ADMINISTRATION

10 TAC §§53.80 - 53.85

The Texas Department of Housing and Community Affairs proposes the repeal of 10 TAC Chapter 53, Subchapter G, §§53.80 - 53.85, concerning Loans and Contract Administration, without changes to the proposal as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6146) and will not be republished. This repeal is adopted in order to consolidate and simplify the existing rules for the HOME Program.

A public hearing to receive input on the proposed rules was held on August 3, 2010 and written comments on the proposed repeal were accepted by mail, e-mail, and facsimile through August 9, 2010.

No comments were received concerning the proposed repeal.

The Board approved the final order adopting this repeal on September 9, 2010.

The repeal of the sections is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005316
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER A. GENERAL

10 TAC §53.1, §53.2

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter A, §53.1 and §53.2, concerning the HOME Investment Partnerships Program, without changes to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6146) and will not be republished.

The new sections ensure compliance with all statutory requirements, incorporate public input from the recent HOME Program rule roundtables, remove duplicative federal and statutory re-

quirements, formalize existing policy and guidelines contained in HOME Program manuals, and include recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email.

A public hearing to receive input on the proposed rule was held on August 3, 2010 and public comments were accepted through August 9, 2010.

No public comments were received.

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005304
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, AND REVIEW AND AWARD PROCEDURES

10 TAC §§53.20 - 53.28

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter B, §§53.20 - 53.28, concerning the HOME Investment Partnerships Program. Section 53.26 and §53.28 are adopted with changes to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6149). Sections 53.20 - 53.25 and 53.27 are adopted without changes and will not be republished.

The new sections ensure compliance with all statutory requirements, incorporate public input from the recent HOME Program rule roundtables, remove duplicative federal and statutory requirements, formalize existing policy and guidelines contained in HOME Program manuals, and include recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email. This document provides the Department's response to all comments received. Comments and responses are presented in the order they appear in the rules.

A public hearing to receive input on the proposed rule was held on August 3, 2010 with no public input received. Public comments were accepted through August 9, 2010, with comments received from (1) Rachel Edwards, Resource Management & Consulting Co., (2) Michael Hunter, President, Hunter & Hunter Consultants, Inc., and (3) DJ Pendleton, Executive Director, Texas Manufactured Housing Association.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER B.

§53.25(a)

PUBLIC COMMENT: Commenter (2) recommended that contract award limits should either include soft cost allowances or be exclusive of soft cost allowances with said funds added to the contract as is currently done with administrative cost allowances.

STAFF RESPONSE: As proposed, contract award limitations are exclusive of soft costs. No change was recommended.

§53.25(c)

PUBLIC COMMENT: Commenter (2) recommended that the benchmark for Homebuyer Assistance Program awards be revised to 22 months for existing homes and 20 months for new construction homes.

STAFF RESPONSE: Based upon roundtable discussions and federal commitment and expenditure deadlines, the proposed rule consolidated the previous benchmarks into one benchmark requirement at 12 months from the contract begin date. Evaluating the progress made toward funding commitments by a Contract Administrator at the 12-month mark is crucial since it maximizes the amount of time remaining for the Contract Administrator to successfully complete the contract award requirements or for the Department to reprogram funds in order to meet federal commitment and expenditure requirements. If a Contract Administrator experiences challenges in completing funding commitments by 12 months into a contract award, the households should be targeted for assistance through the reservation system. No change was recommended at this time.

§53.26(b)

STAFF RECOMMENDATION: Staff recommended clarification of the number of reservations allowed for Single Family Development as follows:

(b) Limits on Number of Reservations. The number of Homeowner Rehabilitation, Homebuyer Assistance or Single Family Development reservations for an RSP is limited to five (5) per county within the RSP's Service Area at any given time. The number of Tenant-Based Rental Assistance reservations for an RSP is limited to thirty (30) at any given time.

§53.26(c)

PUBLIC COMMENT: Commenter (2) recommended that including an exception for Reservation Participation Agreements involving Homebuyer Assistance

STAFF RESPONSE: Staff agreed and also incorporated an exception for Single Family Development funds as follows:

(c) Extremely Low-Income Households. Except for Households served with HBA or SFD funds, each RSP will be required to serve at least one (1) Household at or below 30% of AMFI out of every four (4) Households submitted and approved for assistance.

§53.26(d)

PUBLIC COMMENT: Commenter (2) recommended that credit be given to each RSP for excess match generated by the RSP from this or other contracts administered by the RSP to account for the match requirement.

STAFF RESPONSE: Since this provision requires the proposed match be provided before approval of every fourth Household, excess Match contributions can be credited. No change was recommended at this time.

STAFF RECOMMENDATION: Staff recommended a minor grammatical correction as follows:

(d) Match. An RSP must meet the tiered Match requirements per Program Activity for at least every fourth Household submitted and approved for assistance. For example, if Match is not provided for the first three (3) Households assisted by an RSP, the Match provided to the fourth Household must meet the Match requirement for all four (4) Households.

§53.26(f)

STAFF RECOMMENDATION: Staff recommended clarifying that an extension will include the submission of requests for disbursement as follows:

(f) Extensions. The Division Director may approve one three (3) month time extension to the Commitment of Funds to allow for the completion of construction and submission of requests for disbursement.

§53.28(5)

STAFF RECOMMENDATION: Based on guidance received from recent HUD Conflict of Interest exceptions request reviews, staff recommended clarifying the requirement to publicly disclose the conflict by newspaper publication as follows:

(5) In instances where a potential conflict of interest exist, follow procedures to submit a request to the Department to grant an exception to any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication and a description of how the public disclosure was made. No HOME funds will be committed to or reserved to assist a Household until HUD has granted an exception to the Conflict of Interest provisions;

§53.28(8)(B)

PUBLIC COMMENT: Commenter (3) suggested that if the Department's intention is to specifically require a concrete foundation system, the first instance of "MHU" should be replace with "housing unit" to provide a homeowner with the most available options.

STAFF RESPONSE: Staff agreed with the comment and recommended the following language:

(B) Unless not allowed by local code, provide replacement of an existing housing unit with a new MHU as an available option; and

§53.28(10)

STAFF RECOMMENDATION: In accordance with federal requirements, staff recommended the following clarification:

(10) Except for Multifamily Development and Single Family Development, complete an updated income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the HOME assistance is provided to the Household. For Single Family Development, complete income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the contract to purchase the housing unit is executed with the Household. For Tenant-Based Rental Assistance, in the event that a Household's monthly gross income changes by more than $200, the Household must be recertified and the rental subsidy recalculated;

§53.28(11)

STAFF RECOMMENDATION: In accordance with federal requirements, staff recommended the following clarification:

(11) For single family Program Activities involving construction, perform initial inspection and at least four (4) progress inspections. Property inspections must include photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms. The inspection must be signed and dated by the inspector and CA or RSP;

§53.28(17)

STAFF RECOMMENDATION: To clarify processing requirements for certificates of Contract Completion, staff recommended the following clarification:

(17) For Contract awards, submit certificate of Contract Completion within ten (10) business days of the Department's request;

§53.28(19)

STAFF RECOMMENDATION: To clarify the forms of eligible match, staff recommended the following clarification:

(19) Match contributed to a Project or Activity cannot be mortgage revenue bonds, HOME-match eligible projects, and cannot include any other sources of Department funding unless otherwise approved by the Department.

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

§53.26. Reservation System Participant (RSP) Agreements.

(a) Terms of agreement. RSP agreements will have a twenty-four (24) month term for all Program Activities. Execution of an RSP agreement does not guarantee the availability of funds under a reservation system.

(b) Limits on Number of Reservations. The number of Homeowner Rehabilitation, Homebuyer Assistance or Single Family Development reservations for an RSP is limited to five (5) per county within the RSP's Service Area at any given time. The number of Tenant-Based Rental Assistance reservations for an RSP is limited to thirty (30) at any given time.

(c) Extremely Low-Income Households. Except for Households served with HBA or SFD funds, each RSP will be required to serve at least one (1) Household at or below 30% of AMFI out of every four (4) Households submitted and approved for assistance.

(d) Match. An RSP must meet the tiered Match requirements per Program Activity for at least every fourth Household submitted and approved for assistance. For example, if Match is not provided for the first three (3) Households assisted by an RSP, the Match provided to

the fourth Household must meet the Match requirement for all four (4) Households.

(e) Completion of Construction. For Activities involving construction, an RSP must complete construction and submit all requests for disbursement within nine (9) months from the Commitment of Funds for the Activity.

(f) Extensions. The Division Director may approve one three (3) month time extension to the Commitment of Funds to allow for the completion of construction and submission of requests for disbursement.

(g) An RSP must remain in good standing with the Department, the State of Texas, and HUD. If an RSP is not in good standing, participation in the reservation system will be suspended and may result in termination of the RSP agreement.

§53.28. General Administrative Requirements.

Unless otherwise provided in this chapter, the CA, RSP, or Development Owner, must comply with the following requirements for the administration and use of HOME funds:

(1) Complete training, as applicable;

(2) Provide all applicable Department Housing Contract System access request information and documentation requirements;

(3) Establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the Auditor of the State of Texas, the United States General Accounting Office, the Comptroller of the State of Texas, and the Comptroller of the United States, or any of their duly authorized representatives;

(4) For non-development Program Activities, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including the following:

(A) Develop and comply with written procurement selection criteria and committees;

(B) Develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds and appoint a Procurement Officer to manage any bid process;

(C) Ensure consultant or any procured service provider does not participate in or direct the process of procurement for professional service. In other words, a consultant cannot assist in their own procurement before or after an award is made;

(D) Procedures established for procurement of building construction contractors may not include requirements for the provision of general liability insurance coverage for an amount to exceed the value of the contract;

(E) Building construction contractors must be procured using a formal sealed bid procedure for single family New Construction, Reconstruction or Rehabilitation Activities or Projects;

(F) Professional service providers (consultants) must be procured using an open competitive procedure and may not be procured based solely on the lowest priced bid; and

(G) Any Request for Proposals or Invitation for Bid must include:

(i) An equal opportunity disclosure and that bidders are subject to search for listing on the Excluded Parties List;

(ii) Bidders' protest rights and outline the procedures bidders must take to address procurement related disputes;

(iii) A Conflict of Interest disclosure;

(iv) A clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;

(v) For sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract; and

(vi) For competitive proposal specific, disclose the selection/evaluation criteria;

(5) In instances where a potential conflict of interest exist, follow procedures to submit a request to the Department to grant an exception to any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication and a description of how the public disclosure was made. No HOME funds will be committed to or reserved to assist a Household until HUD has granted an exception to the Conflict of Interest provisions;

(6) Perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or the occurrence of the loan closing, if applicable;

(7) Develop and comply with written applicant intake and selection criteria for and ensure program eligibility (except for Multifamily Development) and promote and comply with Fair Housing requirements;

(8) Except for Multifamily Development, complete applicant intake and applicant selection. Notify each applicant Household in writing of either acceptance or denial of HOME assistance within sixty (60) days following receipt of the intake application. For Homeowner Rehabilitation Assistance and Contract for Deed Conversion the CA or RSP must:

(A) Provide Rehabilitation as an available option to Households, provide Households with a general cost estimate, and to the extent that Rehabilitation would not meet the program requirements, explain these program requirements;

(B) Unless not allowed by local code, provide replacement of an existing housing unit with a new MHU as an available option; and

(C) Explain relocation as an available option to any Households located within the 100-year floodplain and present the costs associated with flood insurance;

(9) Determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609;

(10) Except for Multifamily Development and Single Family Development, complete an updated income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the HOME assistance is provided to the Household. For Single Family Development, complete income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the contract to purchase the housing unit is executed with the Household. For Tenant-Based Rental Assistance, in the event that a Household's monthly gross income changes by more than $200, the Household must be recertified and the rental subsidy recalculated;

(11) For single family Program Activities involving construction, perform initial inspection and at least four (4) progress in-

spections. Property inspections must include photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms. The inspection must be signed and dated by the inspector and CA or RSP;

(12) Submit requests for the Commitment or Reservation of Funds, loan closing preparation, and disbursements and all required information and verification documentation in the Housing Contract System. A request will not be reviewed by the Department until the CA, RSP, or Development Owner has submitted all required documentation. If, during review, the Department identifies Administrative Deficiencies, the Department will allow a cure period of ten (10) business days beginning at the start of the first business day following the date the CA, RSP or Development Owner is notified of the deficiency. If any Administrative Deficiency remains after the cure period, the Department, in its sole discretion, shall disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds;

(13) Not proceed or allow a contractor to proceed with construction, including demolition, on any Activity, Project or Development without first completing the required environmental clearance procedures, preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable;

(14) Not retain Program Income of any kind, including Program Income to fund other eligible HOME Activities;

(15) Submit any Program Income received by the CA, RSP or Development Owner to the Department within ten (10) business days of receipt. Return any refunds to the Department's accounting division and include a written explanation of the return of funds, the Contract number, name of CA, RSP, or Development Owner, Activity address and Activity number referenced on the check;

(16) Submit required documentation for Project completion reports no later than thirty (30) days after the completion of the Activity. For MFD, the Development Owner must periodically update completion reports to provide information on tenants until all HOME units have been occupied;

(17) For Contract awards, submit certificate of Contract Completion within ten (10) business days of the Department's request;

(18) Submit to the Department reports or information regarding the operations related to HOME funds provided by the Department; and

(19) Match contributed to a Project or Activity cannot be mortgage revenue bonds, HOME-match eligible projects, and cannot include any other sources of Department funding unless otherwise approved by the Department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005306

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE (HRA) PROGRAM ACTIVITY

10 TAC §§53.30 - 53.32

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter C, §§53.30 - 53.32, concerning the HOME Investment Partnerships Program, with changes to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6153).

The new sections ensure compliance with all statutory requirements, incorporate public input from the recent HOME Program rule roundtables, remove duplicative federal and statutory requirements, formalize existing policy and guidelines contained in HOME Program manuals, and include recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rules in writing and by email. This document provides the Department's response to all comments received. Comments and responses are presented in the order they appear in the rules.

A public hearing to receive input on the proposed rules was held on August 3, 2010, with no public input received. Public comments were accepted through August 9, 2010, with comments received from (1) Rachel Edwards, Resource Management & Consulting Co., (2) Michael Hunter, President, Hunter & Hunter Consultants, Inc., and (3) DJ Pendleton, Executive Director, Texas Manufactured Housing Association.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER C.

GENERAL PUBLIC COMMENT.

PUBLIC COMMENT: Commenter (1) recommended that Cities or Counties with more than one open contract should be allowed to carry match over to other contracts in accordance with the TDHCA Match Guide.

STAFF RESPONSE: Based on previous rule provisions, a Contract Administrator typically only is allowed one active contract per Program Activity in order to ensure the performance of the contract and efficient utilization of funding. The new rule includes a reservation system as a funding distribution method and provisions to allow a Reservation System Participant to better manage proposed match among households to be served. No change was recommended at this time.

PUBLIC COMMENT: Commenter (1) recommended that the population threshold for a match requirement of 0% of Project funds for Counties should be increased from 20,000 since Counties have a more difficult time identifying match.

STAFF RESPONSE: The new rule provision increased the population threshold to 20,000 for Counties and is a significant change. Staff will analyze the impact the new rule provision has on the Department's match requirement and explore other eligible match sources in order to make a recommendation to increase this threshold in the future, if possible. No change was recommended at this time.

§53.30(1)(A) and (B)

STAFF RECOMMENDATION: The increased population threshold to 20,000 for counties is a significant change and may have an impact on the Department's match requirements, staff recommended the following clarification:

(A) zero percent of Project funds if serving a city of less than 3,000 Persons or an unincorporated area of a county with less than 20,000 Persons;

(B) ten percent of Project funds if serving a city of between 3,001 and 5,000 Persons or an unincorporated area of a county of between than 20,001 and 75,000 Persons; and

§53.30(3)(A)

STAFF RECOMMENDATION: Staff recommended adding the words "or a licensed engineer" to this provision.

(A) The Department will reimburse only for the first time a set of architectural plans are used unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

§53.31(b)

PUBLIC COMMENT: Commenter (3) recommended removing modular homes entirely from this section since modular housing is not governed by Chapter 1201.

STAFF RESPONSE: Staff agreed and recommended the following change:

(b) HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code.

§53.31(b)(1)

STAFF RECOMMENDATION: Based on comments received in response to §53.31(b) above and since there are existing laws and codes that govern MHUs, staff recommended deleting this provision.

§53.31(b)(2)

PUBLIC COMMENT: Commenter (3) recommended revising this provision to require the new installation of an MHU to be in compliance with Chapter 80 of the Texas Administrative Code. The commenter further recommends that if the intention is to establish clear standards for foundation "footings," the revision should cite or state details regarding footings and specifications.

STAFF RESPONSE: It is the Department's intent to require a concrete perimeter foundation and agreed with clarifying the required standard by specifying that the concrete perimeter foundation be approved by an engineer as follows:

(b) HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code.

§53.31(b)(3) and (4)

PUBLIC COMMENT: Commenter (3) recommended the removal of these provisions because they are repetitive of both statute and existing administrative law.

STAFF RESPONSE: Staff agreed and recommended deletion of the provisions.

§53.31(g)(1) and (2)

PUBLIC COMMENT: Commenter (3) recommended that Modular homes should be specifically included with site-built construction and eligible for the same maximum costs - "the lesser of $73 per square foot or $80,000." Additionally, the commenter recommends the MHU replacement maximum should be increased to equal that of site-built and Modular housing replacement construction costs - "the lesser of $73.00 per square foot or $80,000."

STAFF RESPONSE: Based on continued guidance from HUD and federal OMB circulars governing cost reasonableness, no change was recommended at this time. Furthermore, staff has not been made aware of or experienced cost reimbursement requests for MHU units that exceed the maximum of $65,000. It is important to note that this maximum does not include project soft costs that may be incurred with the installation of the unit.

§53.31(i)

PUBLIC COMMENT: Commenter (3) recommended modular homes should be specifically included with the $7,000 per housing unit Reconstruction maximum and the MHU replacement limitation of $3,500 should be increased to equal site-built Reconstruction soft costs of $7,000 because restricting soft costs to half of site-built Reconstruction disproportionately devalues MHUs as an option under the HOME Program. The commenter also recommends waived fees for state-provided, non-federal sourced, services that can be attributed to direct dollar amounts per home be allowed as Match.

STAFF RESPONSE: Based on continued guidance from HUD and federal OMB circulars governing cost reasonableness, no change was recommended at this time. Since Reconstruction activities include site-built housing, which by definition includes modular housing. No change was recommended. Additional information is needed to determine if the waived fees and services are an eligible source of Match.

§53.31(l)

STAFF RECOMMENDATION: Staff recommended clarifying that assistance is based upon the Household's income as follows:

(l) In all other instances not described in subsection (k) of this section, the assistance to an eligible Household may be in the form of a loan or grant agreement with an affordability term for the amount of the total Project costs excluding Match funds and based on the Household's AMFI as reflected in Figure: 10 TAC §53.31(l).

§53.31(n) and (o)

STAFF RECOMMENDATION: Staff recommended clarifying that these provisions apply only in instances in which a federal affordability is not required as follows:

(n) In the event that a federal affordability period is not required and the housing unit transfers by devise, descent or operation

of law upon the death of the assisted homeowner, the heir or remainderman Household or if sold by the decedent's estate, the purchasing Household must qualify for assistance in accordance with this chapter in order for the forgiveness of the loan or grant agreement to continue until maturity.

(o) In the event that a federal affordability period is not required, the housing unit is sold and the purchasing Household does not provide documentation evidencing their income eligibility, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority without prior written consent of the Department unless the entire balance on the loan or grant agreement will be paid at closing.

§53.31(p)

PUBLIC COMMENT: Commenter (3) recommended that this provision include language for MHUs to meet or exceed the HUD Code as 24 CFR Part 3280.

STAFF RESPONSE AND STAFF RECOMMENDATION: Since MHU construction requirements are governed by federal law, no change was recommended. Staff recommended a clarification to include modular housing as site-built housing must meet or exceed the 2000 IRC as follows:

(p) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes and standards. In addition, housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with this chapter.

§53.32(a)(2)

STAFF RECOMMENDATION: To provide clarification, staff recommended inserting the word "costs" after the word "acquisition" and based on public comment received for §53.41(g), staff recommended inserting the word "proposed" before the word "Match" as follows:

(2) A budget that includes the amount of Project funds specifying the acquisition costs, and construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

§53.32(a)(4)(A) - (P) and (9)

PUBLIC COMMENT: Commenter (1) recommended that the requirements in §53.32(a)(4)(A) - (P) be removed. Commenter suggested that the requirements should be in a procedure manual, not the rules.

STAFF RESPONSE: Including the administrative requirements was done to formalize existing policy and guidelines. However, based on public comment received on §53.42(a)(4)(E), staff recommended eliminating subparagraph (E) and clarifying the requirement in §53.32(a)(9) as follows:

(9) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

§53.32(a)(13) - (15)

STAFF RECOMMENDATION: Since the executed grant agreement will be prepared by the Department, and the executed agreement must be provided before the disbursement of funds and because it is included in §53.32(c)(5), staff recommended deleting this requirement in §53.32(a)(14).

§53.32(c)(9)

STAFF RECOMMENDATION: Staff must ensure that required HUD reporting can be completed and therefore recommended the clarification that documentation required for the submission of completion data to HUD must be submitted with the final disbursement request by adding paragraph (9) to this section as follows:

(9) For final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot occurred for Newly Constructed or Rehabilitated housing unit, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation; and

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

§53.30. Homeowner Rehabilitation Assistance (HRA) Program Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with the following:

(1) An itemized schedule of the proposed Match and evidence to support the Applicant's ability to provide the required Match. For Applications submitted to become an RSP, the Department may withhold disbursements if after every four reservations sufficient Match documentation has not been provided. The Department shall use population figures from the most recently available U.S. Census to determine the applicable tier for an Application. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established in the form of a threshold or selection criteria and may be different for each Program Activity. Except for Applications for disaster relief, Match shall be required based on the following tiers:

(A) zero percent of Project funds if serving a city of less than 3,000 Persons or an unincorporated area of a county with less than 20,000 Persons;

(B) ten percent of Project funds if serving a city of between 3,001 and 5,000 Persons or an unincorporated area of a county of between than 20,001 and 75,000 Persons; and

(C) twelve and one-half percent of Project funds for all other applications.

(2) Documentation of a commitment of at least $80,000 or for a Contract award 80% of the award amount, whichever is less, in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and

the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the above requirement; or

(C) The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

(3) Housing construction plans must be certified by a licensed architect. The Department may procure and make architect certified plans available.

(A) The Department will reimburse only for the first time a set of architectural plans are used unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(B) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§53.31. Homeowner Rehabilitation Assistance (HRA) Program Requirements.

(a) Eligible activities are limited to:

(1) The Rehabilitation or Reconstruction of existing owner-occupied housing on the same site. The Rehabilitation of an MHU is not an eligible activity;

(2) The New Construction of site-built housing on the same site to replace an existing owner-occupied Manufactured Housing Unit (MHU);

(3) For only the purposes of relocating the existing housing out of the floodplain, the replacement of existing owner-occupied housing with an MHU or New Construction of site-built housing on another site;

(4) If housing unit is uninhabitable as a result of disaster or condemnation by local government, the Household is eligible for the New Construction of site-built housing or an MHU under this section provided the assisted Household documents that the housing unit was previously their Principal Residence through evidence of a homestead exemption from the local taxing jurisdiction and Household certification; or

(5) If allowable under the NOFA, the refinance of an existing mortgage meeting the federal requirements at 24 CFR §92.206(b) and any additional requirements in the NOFA.

(b) HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code.

(c) Real property taxes assessed on the housing unit must be current and/or the Household must be participating in an approved payment plan with the taxing authority.

(d) The property must not be encumbered with tax liens, child support liens, or mechanic or materialmen's liens.

(e) If a housing unit has an existing mortgage loan and Department funds are provided in the form of a loan, the Department will require a first lien if the loan has an outstanding balance that is less than the investment of HOME funds and any of the following are true:

(1) A federal affordability period is required; or

(2) Any existing mortgage has been in place for less three years from the date the Household applies for assistance; or

(3) The HOME loan is structured as a repayable loan.

(f) The Household must be current on any existing mortgage loans or home equity loans. If the Department's assistance is provided in the form of a loan, the property cannot have any existing home equity loan liens.

(g) The total Project costs are inclusive of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), and Match funds for Project costs, and are limited to:

(1) Reconstruction and New Construction of site-built housing: The lesser of $73.00 per square foot or $80,000 or for Households of 6 or more Persons the lesser of $73.00 per square foot or $85,000;

(2) Replacement with an MHU: $65,000;

(3) Rehabilitation that is not Reconstruction: $30,000; and

(4) Refinancing of existing mortgages: in addition to the costs limited under paragraphs (1) - (3) of this subsection, the cost to refinance an existing mortgage is limited to the amount determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than 25% and no greater than 30% of the Household's gross monthly income based on a thirty (30) year amortization schedule. Refinancing is not eligible for an Activity involving relocation under subsection (a)(3) of this section.

(h) In addition to the Project costs allowable under subsection (g) of this section, up to $5,000 will be allowed in Project costs for additional sitework related to accessibility features if the house will be located more than 50 feet from the nearest paved roadway or if the house is being elevated above the floodplain.

(i) Project soft costs are limited to:

(1) Reconstruction or New Construction: no more than $7,000 per housing unit;

(2) Replacement with an MHU: no more than $3,500 per housing unit;

(3) Rehabilitation that is not Reconstruction: $5,000 per housing unit. This limit may be exceeded for lead-based paint remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Project soft costs for housing units that are Reconstructed or if the existing housing unit was built after December 31, 1977; and

(4) Third-party Project soft costs related to loan closing requirements, such as appraisals, title reports or insurance, tax certificates, recording fees, and surveys are not subject to a maximum per Activity or Project.

(j) Funds for Administrative costs are limited to no more than 4% of the total Project costs, exclusive of Project soft costs and Match funds.

(k) In the following instances, the assistance to an eligible Household shall be in the form of a loan in the amount of the total Project costs excluding Match funds. The loan will be at 0% interest

and include deferral of payment and annual pro-rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(1) An MHU being replaced with newly constructed housing (site-built) on the same site;

(2) Any housing unit being replaced on an another site;

(3) Any housing unit that is being relocated out of the floodplain or replaced due to uninhabitability as allowed under subsection (b) of this section;

(4) Any Project Activity that includes any amount of refinancing of existing debt; and

(5) Any Project Activity that requires a federal affordability period.

(l) In all other instances not described in subsection (k) of this section, the assistance to an eligible Household may be in the form of a loan or grant agreement with an affordability term for the amount of the total Project costs excluding Match funds and based on the Household's AMFI as reflected in Figure: 10 TAC §53.31(l).
Figure: 10 TAC §53.31(l)

(m) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the loan or grant agreement will cease and the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(n) In the event that a federal affordability period is not required and the housing unit transfers by devise, descent or operation of law upon the death of the assisted homeowner, the heir or remainderman Household or if sold by the decedent's estate, the purchasing Household must qualify for assistance in accordance with this chapter in order for the forgiveness of the loan or grant agreement to continue until maturity.

(o) In the event that a federal affordability period is not required, the housing unit is sold and the purchasing Household does not provide documentation evidencing their income eligibility, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority without prior written consent of the Department unless the entire balance on the loan or grant agreement will be paid at closing.

(p) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes and standards. In addition, housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with this chapter.

§53.32. Homeowner Rehabilitation Assistance (HRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following true and complete information, certified as such, with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Project funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

(B) Identification and resolution of potential and/or existing conflicts of interest;

(C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;

(D) Identification if any Household member owes a debt to the State of Texas;

(E) Identification of head of Household's race and ethnicity;

(F) Household special needs status, if applicable;

(G) Names of Household members who are temporarily absent and reason for absence, if applicable;

(H) Future Household members and explanation, if applicable;

(I) Income sources and gross amounts for all Household members;

(J) Full-time student status of Household members over age 18, if applicable;

(K) Type and source of all assets owned by Household members including cash value and annual asset income;

(L) Year in which property to be assisted was built;

(M) Household's occupancy requirements including number of bedrooms being requested;

(N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and

(O) Signatures of all Household members age 18 or over;

(5) Certification of the income eligibility of the Household signed by the CA or RSP and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within $3,000 of the 80% AMFI, all documentation used to determine the income of the Household;

(6) Provide written consent from all Persons who have a valid lien or ownership interest in the Property for the rehabilitation or reconstruction activities;

(7) In the instance of relocation in accordance with §53.31(a)(3) of this chapter (relating to HRA Program Requirements), the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME Project funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for an Activity under this paragraph, the CA or RSP Match obligation

may be reduced by the cost of such demolition without any Contract amendment in order to facilitate relocation;

(8) Identification of any Lead-Based Paint (LBP);

(9) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(10) Consent to demolish from any existing mortgage lien holders and consent to subordinate to the Department's loan, if applicable;

(11) If applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, duplication of benefit, or floodplain mitigation;

(12) A title commitment or policy or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or 99-year leasehold. In instances of an MHU, a Statement of Ownership and Location (SOL). Together, these documents must evidence the definition of Homeownership is met. The title commitment or down date endorsement must not be older than ninety (90) days on the date submitted to the Department for a Commitment of Funds;

(13) Tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current; and

(14) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing. The CA or RSP must comply with or submit the following with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

(1) A title commitment that expires prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(2) In the instances of replacement with an MHU, information necessary to draft loan documents and issue SOL; and

(3) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship.

(c) Disbursement of funds. The CA or RSP must comply with all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement.

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

(2) If applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and CA or RSP;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) The executed grant agreement or original, executed, legally enforceable loan documents and SOL, if applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA or RSP to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA or RSP as may be necessary or advisable for compliance with all Program Requirements;

(7) With the exception of up to 10% of the total funds available for Administrative costs, the request for funds for Administrative costs must be proportionate to the amount of Project costs requested or already disbursed;

(8) Include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction;

(9) For final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot occurred for Newly Constructed or Rehabilitated housing unit, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation; and

(10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005308

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER D. HOMEBUYER ASSISTANCE (HBA) PROGRAM ACTIVITY

10 TAC §§53.40 - 53.42

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter D, §§53.40 - 53.42, concerning the HOME Investment Partnerships Program. Section 53.41 and §53.42 are adopted with changes to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6157). Section 53.40 is adopted without changes and will not be republished.

The new sections ensure compliance with all statutory requirements, incorporate public input from the recent HOME Program rule roundtables, remove duplicative federal and statutory requirements, formalize existing policy and guidelines contained in HOME Program manuals, and include recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rules in writing and by email. This document provides the Department's response to all comments received. Comments and responses are presented in the order they appear in the rules.

A public hearing to receive input on the proposed rules was held on August 3, 2010 with no public input received. Public comments were accepted through August 9, 2010, with comments received from (1) Rachel Edwards, Resource Management & Consulting Co., (2) Michael Hunter, President, Hunter & Hunter Consultants, Inc., and (3) DJ Pendleton, Executive Director, Texas Manufactured Housing Association.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER D.

§53.41(b)

PUBLIC COMMENT: Commenter (3) recommended removing modular homes entirely from this section since modular housing is not governed by Chapter 1201.

STAFF RESPONSE: Staff agreed and recommended the following change:

(b) A new MHU is an eligible property type for acquisition only. HOME funds may be used to acquire a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act.

§53.41(b)(1)

STAFF RECOMMENDATION: Based on comments received concerning §53.41(b) above and since there are existing laws and codes that govern MHUs, staff recommended deleting this provision.

§53.41(b)(2)

PUBLIC COMMENT: Commenter (3) recommended revising this provision to require the new installation of an MHU to be in compliance with Chapter 80 of the Texas Administrative Code. The commenter further recommended that if the intention is to establish clear standards for foundation "footings", the revision should cite or state details regarding footings and specifications.

STAFF RESPONSE: It is the Department's intent to require a concrete perimeter foundation and agreed with clarifying the required standard by specifying that the concrete perimeter foundation be approved by an engineer as follows:

(b) A new MHU is an eligible property type for acquisition only. HOME funds may be used to acquire a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code.

§53.41(b)(3) and (4)

PUBLIC COMMENT: Commenter (3) recommended the removal of these provisions because they are repetitive of both statute and existing administrative law.

STAFF RESPONSE: Staff agreed and recommended deletion of the provisions.

§53.41(d)(3)

PUBLIC COMMENT: Commenter (2) recommended revisions to limit the interest rate for first lien mortgages based on the average rate published by Freddie Mac instead of prohibiting adjustable rate mortgage loans and temporary interest rate buydown loans.

STAFF RESPONSE: Upon guidance from HUD, this provision was included in the rule in 2009. Additionally, staff is not aware of challenges created by this provision for households received HBA assistance. No change was recommended at this time.

§53.41(d)(4)

PUBLIC COMMENT: Commenter (2) recommended adding legal document preparation, credit report and flood certifications to the list of exceptions to the 2% cap.

STAFF RESPONSE: Since there is great variation on whether a lender pays these fees as a pass-through or provides the actual service with a markup, no change was recommended. However, staff clarified this provision in order to be able to include these fees as allowable and set an overall cap on lender fees at $2,500 as follows:

(d) The first lien purchase loans must comply with the following requirements:

(1) No adjustable rate mortgage loans (ARMs) or temporary interest rate buy-down loans are allowed;

(2) No mortgage loans with a total loan to value equal to or greater than 100% are allowed;

(3) No Subprime Mortgage Loans are allowed;

(4) Other than surveys and appraisals reimbursed to third-parties and fees allowed for the origination of single family mortgage revenue bond and mortgage credit certificate programs, fees charged by the lender in connection with mortgage loans may not exceed 2,500;

§53.41(d)(6)

PUBLIC COMMENT: Commenter (2) recommended that identity of relationship be further defined.

STAFF RESPONSE: Based on guidance from HUD, this provision was included and designed to prohibit seller-financed acquisitions. Specific situations can be further reviewed based on information provided in order to determine if the provision applies. No change was recommended at this time.

§53.41(e)(1)

PUBLIC COMMENT: Commenter (2) recommended revisions to allow the amount of assistance not to exceed $20,000 with no affordability analysis required.

STAFF RESPONSE AND RECOMMENDATION: Based on continued guidance from HUD regarding the Department develop first lien underwriting guidelines and ensuring costs reasonableness in accordance with Federal OMB Circulars, staff recommended eliminating the 30% maximum requirement only as follows:

(e) The total Project costs are inclusive of acquisition and closing costs, hard construction costs for accessibility modifications, and Match funds, and limited to:

(1) Acquisition and closing costs: the lesser of $20,000 or the amount necessary as determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than 25% of the Household's gross monthly income based on a thirty (30) year amortization schedule; and

(2) Rehabilitation for accessibility modifications: $20,000.

§53.41(f)(1)

PUBLIC COMMENT: Commenter (2) recommended striking "Acquisition and closing costs" as soft costs are neither and revising "$1,500 per housing unit" to "$2,000 per housing unit."

STAFF RESPONSE: Staff agrees that acquisition and closing costs are not project soft costs. The phrase "Acquisition and closing costs" is used identify the maximum amount of soft costs per type of activity performed. No change was recommended at this time. Based on continued guidance from HUD and federal OMB circulars governing cost reasonableness, no change was recommended regarding the maximum amount of soft costs per housing unit.

§53.41(g)

PUBLIC COMMENT: Commenter (2) recommended changing the word "exclusive" to "inclusive" and inserting the words "exclusive of" in front of "Match funds."

STAFF RESPONSE: Based on continued guidance from HUD and federal OMB circulars governing cost reasonableness, no change was recommended at this time.

§53.41(m)

STAFF RECOMMENDATION: To add clarification, staff recommended adding "the HOME Final Rule" to this provision.

(m) Housing units that will be rehabilitated with HOME funds must meet or exceed the TMCS, as applicable, and all applicable codes and standards. In addition, housing that is Rehabilitated under this chapter must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

§53.42

PUBLIC COMMENT: Commenter (2) recommended eliminating all subsections of this section and replacing text with the phrase: "Commitment or reservation of funds, loan closing, and disbursement of funds must follow the published procedures manual prepared and distributed by TDHCA."

STAFF RESPONSE: Including the administrative requirements was done to formalize existing policy and guidelines. Staff does not expect these administrative requirements to adversely impact the flexibility of the program or the administration of the program. No change was recommended.

§53.42(a)(2)

PUBLIC COMMENT: Commenter (2) recommended inserting the word "proposed" before the word "Match."

STAFF RESPONSE AND RECOMMENDATION: To provide clarification, staff recommended inserting the word "costs" after the word "acquisition" and staff agrees with recommendation to insert the word "proposed" before the word "Match" as follows:

(2) A budget that includes the amount of Project funds specifying the acquisition costs, and construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

§53.42(a)(4)(E) and (7)

PUBLIC COMMENT: Commenter (2) stated this information was unknown at the time of prospective homebuyer's application and it is a mistake to include that information on the application itself as this is information that the Contract Administrator or first lien lender should provide.

STAFF RECOMMENDATION: Staff recommended eliminating subparagraph (E) and clarifying the requirement in §53.42(a)(7) as follows:

(7) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

§53.42(a)(4)(J)

PUBLIC COMMENT: Commenter (2) recommended inserting "over the age of 18" after members.

STAFF RESPONSE: Since this provision is governed by federal regulations, no change was recommended at this time.

§53.42(a)(4)(M)

PUBLIC COMMENT: Commenter (2) recommended revisions to "Was property built prior to 1978? Yes. No."

STAFF RESPONSE: This provisions details the requirements of information that must be provided, however, this revision will be considered for sample application intake forms. No change was recommended at this time.

§53.42(a)(6)

PUBLIC COMMENT: Commenter (2) recommended revising this requirement to state "Certification of Receipt of Lead-Based Paint Booklet."

STAFF RESPONSE: In order approve a Commitment of Funds and ensure compliance with federal regulations, the identification of the presence of lead-based paint must be provided. No change was recommended at this time.

§53.42(c)(2)

PUBLIC COMMENT: Commenter (2) recommended an exception to this provision for HBA activities.

STAFF RESPONSE: This certification is required of all Contract Administrators and Reservation System Participants, regardless of the timing of the completion of the activities, in order to ensure compliance with federal regulations for the disbursement of HOME funds. No change was recommended at this time.

§53.42(c)(6)

PUBLIC COMMENT: Commenter (2) recommended the provision includes a definition for "reasonable."

STAFF RESPONSE: The eligibility and reasonableness of costs is governed by the HOME federal regulations and OMB Circulars. No change was recommended at this time.

§53.42(c)(9)

STAFF RECOMMENDATION: Staff must ensure that required HUD reporting can be completed and therefore, recommended the clarification that documentation required for the submission of completion data to HUD must be submitted with the final disbursement request by adding paragraph (9) to this section as follows:

(9) For Activities involving Rehabilitation, include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction and until submission of documentation required for Project completion reports; and

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

§53.41. Homebuyer Assistance (HBA) Program Requirements.

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation for accessibility modifications of single family housing units.

(b) A new MHU is an eligible property type for acquisition only. HOME funds may be used to acquire a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act.

(c) The Household must complete a homebuyer counseling program/class.

(d) The first lien purchase loans must comply with the following requirements:

(1) No adjustable rate mortgage loans (ARMs) or temporary interest rate buy-down loans are allowed;

(2) No mortgage loans with a total loan to value equal to or greater than 100% are allowed;

(3) No Subprime Mortgage Loans are allowed;

(4) Other than surveys and appraisals reimbursed to third-parties and fees allowed for the origination of single family mortgage revenue bond and mortgage credit certificate programs, fees charged by the lender in connection with mortgage loans may not exceed $2,500;

(5) The debt to income ratio (back-end ratio) may not exceed 45%;

(6) No identity of interest relationship between the lender and the Household is allowed; and

(7) If an identity of interest exists between the Household and the seller, the Department may require additional documentation that evidences that the sales price is equal to or less than the appraised value of the property as documented by a Third-Party appraisal ordered by the first lien lender. If an identity of interest exists between the builder and CA or RSP, the CA or RSP must provide documentation that evidences that the sales price does not provide for a profit of more than 15% of the total hard construction costs and does not exceed the current appraised value as documented by a Third-Party appraisal ordered by the first lien lender.

(e) The total Project costs are inclusive of acquisition and closing costs, hard construction costs for accessibility modifications, and Match funds, and limited to:

(1) Acquisition and closing costs: the lesser of $20,000 or the amount necessary as determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than 25% of the Household's gross monthly income based on a thirty (30) year amortization schedule; and

(2) Rehabilitation for accessibility modifications: $20,000.

(f) Project soft costs are limited to:

(1) Acquisition and closing costs: no more than $1,500 per housing unit; and

(2) Rehabilitation for accessibility modifications: $5,000 per housing unit.

(g) Funds for Administrative costs are limited to no more than 4% of the total Project costs, exclusive of Project soft costs and Match funds.

(h) The assistance to an eligible Household shall be in the form of a loan in the amount of the total Project costs excluding Match funds. The loan will be at 0% interest and include deferral of payment and annual pro-rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(i) Any forgiveness of the Loan occurs upon the anniversary date of the Household's continuous occupancy as its Principal Residence and continues on an annual pro-rata basis until maturity of the Loan.

(j) In the event that the housing unit ceases to be the Principal Residence of the Household, the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(k) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the Loan, if applicable, will cease.

(l) In the event that the housing unit is sold, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority unless the balance on the Loan will be paid at closing.

(m) Housing units that will be rehabilitated with HOME funds must meet or exceed the TMCS, as applicable, and all applicable codes and standards. In addition, housing that is Rehabilitated under this chapter must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

§53.42. Homebuyer Assistance (HBA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following true and complete information, certified as such, with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Project funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested. A maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

(B) Identification and resolution of potential and/or existing conflicts of interest;

(C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;

(D) Identification if any Household member owes a debt to the State of Texas;

(E) Identification of head of Household's race and ethnicity;

(F) Household special needs status, if applicable;

(G) Names of Household members who are temporarily absent and reason for absence, if applicable;

(H) Future Household members and explanation, if applicable;

(I) Income sources and gross amounts for all Household members;

(J) Full-time student status of Household members over age 18, if applicable;

(K) Type and source of all assets owned by Household members including cash value and annual asset income;

(L) Year in which property to be assisted was built;

(M) Household's occupancy requirements including number of bedrooms being requested;

(N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and

(O) Signatures of all Household members age 18 or over;

(5) Certification of the income eligibility of the Household signed by the CA or RSP, and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within $3,000 of the 80% AMFI, all documentation used to determine the income of the Household;

(6) Identification of Lead-Based Paint (LBP);

(7) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(8) Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(9) If applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, or duplication of benefit; and

(10) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing. The CA or RSP must submit the following with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

(1) A title commitment to issue a title policy not older than ninety (90) days when submitted for a Commitment of Funds that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and

(2) A good faith estimate that is or letter from the lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien mortgage loan requirements, and the requirements of this chapter.

(c) Disbursement of funds. The CA or RSP must comply all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement:

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

(2) If applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) Property inspections. The inspection must be signed and dated by the inspector and CA, RSP, or Development Owner;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA or RSP to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA or RSP as may be necessary or advisable for compliance with all program requirements;

(7) With the exception of up to 10% of the total funds available for Administrative costs, the request for funds for Administrative costs must be proportionate to the amount of Project costs requested or already disbursed;

(8) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(9) For Activities involving Rehabilitation, include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction and until submission of documentation required for Project completion reports; and

(10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005310

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER E. CONTRACT FOR DEED CONVERSION (CFDC) PROGRAM ACTIVITY

10 TAC §§53.50 - 53.52

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter E, §§53.50 - 53.52, concerning the HOME Investment Partnerships Program, with changes to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6160).

The new sections ensure compliance with all statutory requirements, incorporate public input from the recent HOME Program rule roundtables, remove duplicative federal and statutory requirements, formalize existing policy and guidelines contained in HOME Program manuals, and include recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rules in writing and by email. This document provides the Department's response to all comments received. Comments and responses are presented in the order they appear in the rules.

A public hearing to receive input on the proposed rules was held on August 3, 2010 with no public input received. Public comments were accepted through August 9, 2010, with comments received from (1) Rachel Edwards, Resource Management & Consulting Co., (2) Michael Hunter, President, Hunter & Hunter Consultants, Inc., and (3) DJ Pendleton, Executive Director, Texas Manufactured Housing Association.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER E.

§53.50(2)(A)

STAFF RECOMMENDATION: Staff recommended adding the words "or a licensed engineer" to this provision.

(A) The Department will reimburse only for the first time a set of architectural plans are used unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

§53.51(b)

PUBLIC COMMENT: Commenter (3) recommended removing modular homes entirely from this section since modular housing is not governed by Chapter 1201.

STAFF RESPONSE: Staff agreed and recommended the following change:

(b) A new MHU is an eligible property type for acquisition only. An MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an existing unit with a new MHU if the unit is permanently installed with an engineer

approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act.

§53.51(b)(1)

STAFF RECOMMENDATION: Based on comments received in response to §53.31(b) above and since there are existing laws and codes that govern MHUs, staff recommended deleting this provision.

§53.51(b)(2)

PUBLIC COMMENT: Commenter (3) recommended revising this provision to require the new installation of an MHU to be in compliance with Chapter 80 of the Texas Administrative Code. The commenter further recommends that if the intention is to establish clear standards for foundation "footings," the revision should cite or state details regarding footings and specifications.

STAFF RESPONSE: It was the Department's intent to require a concrete perimeter foundation and staff agreed with clarifying the required standard by specifying that the concrete perimeter foundation be approved by an engineer as follows:

(b) A new MHU is an eligible property type for acquisition only. An MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an existing unit with a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code.

§53.51(b)(3) and (4)

PUBLIC COMMENT: Commenter (3) recommended the removal of these provisions because they are repetitive of both statute and existing administrative law.

STAFF RESPONSE: Staff agreed and recommended deletion of the provisions.

§53.51(f)(2) and (3)

PUBLIC COMMENT: Commenter (3) recommended that Modular homes should be specifically included with site-built construction and eligible for the same maximum costs - "the lesser of $73 per square foot or $80,000." Additionally, the commenter recommends the MHU replacement maximum should be increased to equal that of site-built and Modular housing replacement construction costs - "the lesser of $73.00 per square foot or $80,000."

STAFF RESPONSE: Based on continued guidance from HUD and federal OMB circulars governing cost reasonableness, no change was recommended at this time. Furthermore, staff has not been made aware of or experienced cost reimbursement requests for MHU units that exceed the maximum of $65,000. It is important to note that this maximum does not include project soft costs that may be incurred with the installation of the unit.

§53.51(h)(2) and (3)

PUBLIC COMMENT: Commenter (3) suggested that modular homes should be specifically included with the $7,000 per housing unit Reconstruction maximum and the MHU replacement limitation of $3,500 should be increased to equal site-built Reconstruction soft costs of $7,000 because restricting soft costs to half of site-built Reconstruction disproportionately devalues MHUs as an option under the HOME Program. The commenter also recommended waiving fees for state-provided, non-federal sourced, services that can be attributed to direct dollar amounts per home be allowed as Match.

STAFF RESPONSE: Based on continued guidance from HUD and federal OMB circulars governing cost reasonableness, no change was recommended at this time. Since Reconstruction activities include site-built housing, which by definition includes modular housing, no change was recommended. Additional information is needed to determine if the waived fees and services are an eligible source of Match.

§53.51(o)

STAFF RECOMMENDATION: Staff recommended a clarification to specify that site-built housing must meet or exceed the 2000 IRC as follows:

(o) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes and standards. In addition, housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only, must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

§53.52(a)(2)

STAFF RECOMMENDATION: To provide clarification, staff recommended inserting the word "costs" after the word "acquisition" and based on public comment received for §53.42(a), staff recommended inserting the word "proposed" before the word "Match" as follows:

(2) A budget that includes the amount of Project funds specifying the acquisition costs, and construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

§53.52(a)(4)(E) and (7)

STAFF RECOMMENDATION: Based on public comment received for §53.42(a)(4)(E), staff recommended eliminating subparagraph (E) and clarifying the requirement in §53.52(a)(7) as follows:

(7) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

§53.52(c)(10)

STAFF RECOMMENDATION: Staff must ensure that required HUD reporting can be completed and therefore recommended the clarification that documentation required for the submission of completion data to HUD must be submitted with the final disbursement request by adding paragraph (10) to this section as follows:

(10) For final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot occurred for Newly Constructed or Rehabilitated housing unit, certification or other evidence acceptable

to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation; and

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

§53.50. Contract for Deed Conversion (CFDC) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with the following:

(1) Documentation of a commitment of at least $80,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the above requirement; or

(C) The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

(2) Housing construction plans must be certified by a licensed architect. The Department may procure and make architect certified plans available.

(A) The Department will reimburse only for the first time a set of architectural plans are used unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(B) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§53.51. Contract for Deed Conversion (CFDC) Program Requirements.

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units.

(b) A new MHU is an eligible property type for acquisition only. An MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an existing unit with a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code.

(c) The Household's income must not exceed 60% AMFI and the Household must complete a homebuyer counseling program/class.

(d) The Property must not be encumbered with tax liens, child support liens, or mechanic or materialmen's liens.

(e) The Department will require a first lien position.

(f) The total Project costs are inclusive of acquisition costs, closing costs, hard construction costs, demolition costs, aerobic septic systems, and Match funds, and limited to:

(1) Acquisition and closing costs: $35,000. In the case of a contract for deed conversion housing unit that involves the acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed $40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: The lesser of $73.00 per square foot or $80,000 or for Households of 6 or more Persons the lesser of $73.00 per square foot or $85,000;

(3) Replacement with an MHU: $65,000; and

(4) Rehabilitation that is not Reconstruction: $30,000.

(g) In addition to the Project costs allowable under subsection (f) of this section, up to $5,000 will be allowed in Project costs for additional sitework related to accessibility features if the house will be located more than 50 feet from the nearest paved roadway or if the house is being elevated above the floodplain.

(h) Project soft costs are limited to:

(1) Acquisition and closing costs: no more than $1,500 per housing unit;

(2) Reconstruction or New Construction: no more than $7,000 per housing unit;

(3) Replacement with and MHU: no more than $3,500 per housing unit; and

(4) Rehabilitation that is not Reconstruction: $5,000 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Project soft costs for housing units that are Reconstructed or if the existing housing unit was built after December 31, 1977.

(i) Funds for Administrative costs are limited to no more than 4% of the total Project costs, exclusive of Project soft costs and Match funds.

(j) The assistance to an eligible Household shall be in the form of a loan in the amount of the total Project costs excluding Match funds. The loan will be at 0% interest and include deferral of payment and annual pro-rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(k) Any forgiveness of the Loan occurs upon the anniversary date of the Household's continuous occupancy as its Principal Residence and continues on an annual pro-rata basis until maturity of the Loan.

(l) In the event that the housing unit ceases to be the Principal Residence of the Household, the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(m) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the loan, if applicable, will cease.

(n) In the event that the housing unit is sold, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an

amount not less than the current appraised value as then appraised by the appropriate governmental authority unless the balance on the loan will be paid at closing.

(o) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes and standards. In addition, housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only, must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

§53.52. Contract for Deed Conversion (CFDC) Administrative Requirements.

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following true and correct information, certified as such, with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Project funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

(B) Identification and resolution of potential and/or existing conflicts of interest;

(C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;

(D) Identification if any Household member owes a debt to the State of Texas;

(E) Identification of head of Household's race and ethnicity;

(F) Household special needs status, if applicable;

(G) Names of Household members who are temporarily absent and reason for absence, if applicable;

(H) Future Household members and explanation, if applicable;

(I) Income sources and gross amounts for all Household members;

(J) Full-time student status of Household members over age 18, if applicable;

(K) Type and source of all assets owned by Household members including cash value and annual asset income;

(L) Year in which property to be assisted was built;

(M) Household's occupancy requirements including number of bedrooms being requested;

(N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and

(O) Signatures of all Household members age 18 or over;

(5) Certification of the income eligibility of the Household signed by the CA or RSP and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within $3,000 of the 80% AMFI, all documentation used to determine the income of the Household;

(6) Identification of Lead-Based Paint (LBP);

(7) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(8) If applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, duplication of benefit, or floodplain mitigation; and

(9) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing. The CA or RSP must submit the following with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

(1) A title commitment to issue a title policy not older than ninety (90) days when submitted for a Commitment of Funds that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(2) In the instances of replacement with an MHU, information necessary to draft loan documents and issue Statement of Ownership and Location (SOL);

(3) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship; and

(4) A copy of the recorded contract for deed and a current payoff statement.

(c) Disbursement of funds. The CA or RSP must comply all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement.

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

(2) If applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the

bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and CA or RSP;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents, and SOL, as applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA, RSP, or Development Owner to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA or RSP as may be necessary or advisable for compliance with all program requirements;

(7) With the exception of up to 10% of the total funds available for Administrative costs, the request for funds for Administrative costs must be proportionate to the amount of Project costs requested or already disbursed;

(8) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(9) Include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction;

(10) For final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation; and

(11) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005312
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER F. TENANT-BASED RENTAL ASSISTANCE (TBRA) PROGRAM ACTIVITY

10 TAC §§53.60 - 53.62

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter F, §§53.60 - 53.62, concerning the HOME Investment Partnerships Program. Section 53.62 is adopted with changes to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6163). Sections 53.60 and 53.61 are adopted without changes and will not be republished.

The new sections ensure compliance with all statutory requirements, incorporate public input from the recent HOME Program rule roundtables, remove duplicative federal and statutory requirements, formalize existing policy and guidelines contained in HOME Program manuals, and include recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Board approved the final order adopting the new sections on September 9, 2010.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email.

A public hearing to receive input on the proposed rule was held on August 3, 2010 and public comments were accepted through August 9, 2010, with no public comments received for §§53.60 - 53.62.

STAFF RECOMMENDATION ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER F.

§53.62(b)(6) - (8)

STAFF RECOMMENDATION: Staff must ensure that required HUD reporting can be completed and therefore recommended the clarification that documentation required for the submission of completion data to HUD must be submitted with the final disbursement request by adding paragraph (7) to this section as follows:

(7) For final disbursement requests, submission of documentation required for Project completion reports; and

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

§53.62. Tenant-Based Rental Assistance (TBRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Project funds and Administrative costs requested, Match to be provided, evidence that Project cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

(B) Identification and resolution of potential and/or existing conflicts of interest;

(C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;

(D) Identification if any Household member owes a debt to the State of Texas;

(E) Identification of head of Household's race and ethnicity;

(F) Household special needs status, if applicable;

(G) Names of Household members who are temporarily absent and reason for absence, if applicable;

(H) Future Household members and explanation, if applicable;

(I) Income sources and gross amounts for all Household members;

(J) Full-time student status of Household members over age 18, if applicable;

(K) Type and source of all assets owned by Household members including cash value and annual asset income;

(L) Year in which property to be assisted was built;

(M) Household's occupancy requirements including number of bedrooms being requested;

(N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and

(O) Signatures of all Household members age 18 or over;

(5) Certification of the income eligibility of the Household signed by the CA or RSP, and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income and rental subsidy of the Household;

(6) Identification of Lead-Based Paint (LBP);

(7) If applicable, documentation to address or resolve any potential Conflict of Interest or duplication of benefit; and

(8) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The CA or RSP must comply all of the following requirements for a request for disbursement of funds. Submission of documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement.

(1) If required or applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(2) Property inspections. The inspection must be signed and dated by the inspector and CA or RSP;

(3) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(4) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA or RSP to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA, RSP, or Development Owner as may be necessary or advisable for compliance with all Program Requirements;

(5) With the exception of up to 25% of the total funds available for Administrative costs, the request for funds for Administrative costs must be proportionate to the amount of Project costs requested or already disbursed;

(6) Requests may come in up to ten (10) days in advance of the first day of the following month;

(7) For final disbursement requests, submission of documentation required for Project completion reports; and

(8) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005313
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER G. SINGLE FAMILY DEVELOPMENT (SFD) PROGRAM ACTIVITY

10 TAC §§53.70 - 53.72

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter G, §§53.70 - 53.72, concerning the HOME Investment Partnerships Program. Section 53.72 is adopted with changes to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6165). Section 53.70 and §53.71 are adopted without changes and will not be republished.

The new sections ensure compliance with all statutory requirements, incorporate public input from the recent HOME Program rule roundtables, remove duplicative federal and statutory requirements, formalize existing policy and guidelines contained in HOME Program manuals, and include recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email. This document provides the Department's response to all comments received. Comments and responses are presented in the order they appear in the rules.

A public hearing to receive input on the proposed rule was held on August 3, 2010 with no public input received. Public comments were accepted through August 9, 2010, with comments received from (1) Rachel Edwards, Resource Management & Consulting Co., (2) Michael Hunter, President, Hunter & Hunter Consultants, Inc., and (3) DJ Pendleton, Executive Director, Texas Manufactured Housing Association.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER G.

§53.71(c)

PUBLIC COMMENT: Commenter (2) requested the income level for households assisted under the Single Family Development Program Activity be increased from 60% of the AMFI to 80% of the AMFI citing that new construction costs are more expensive than existing housing and that the program should be used to assist cities with their infill housing programs (building on vacant lots).

STAFF RESPONSE: This Program Activity has evolved from the Colonia Model Subdivision Program concept and has expanded to provide communities the ability to acquire and rehabilitation existing housing stock, as well as the new construction of housing units. As designed, the program has provided 100% mortgage financing in order to provide assistance to the harder to serve populations, based on household income, when compared to those low-income households that may be able to obtain mortgage financing from conventional mortgage lenders. Since downpayment and closing costs assistance, in the form of a deferred, forgivable loan, is available to households earning up to 80% of the AMFI through the HOME Homebuyer Assistance (HBA) Program. No change was recommended at this time.

§53.71(h)(1)

PUBLIC COMMENT: Commenter (2) requested a change to increase the amount of downpayment assistance available under this Program Activity from $15,000 to $20,000 and reduce the term from 15 years to 10 years in order to bring this program into balance with the HBA Program Activity.

STAFF RESPONSE: Based on continued guidance from HUD regarding the Department develop first lien underwriting guidelines and ensuring costs reasonableness in accordance with Federal OMB Circulars, no change was recommended at this time.

§53.72(a)(2)

STAFF RECOMMENDATION: Based on public comments received concerning §53.42(a)(2), staff recommended inserting the word "proposed" before the word "Match" as follows:

(2) A budget that includes the amount of Project funds specifying the acquisition cost, construction costs, developer fees. A maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

§53.72(a)(4)(E)

STAFF RECOMMENDATION: Based on public comments received concerning §53.42(a)(4)(E), staff recommended deleting this requirement.

§53.72(c)(8), (9), and (10)

STAFF RECOMMENDATION: Staff must ensure that required HUD reporting can be completed and therefore recommended the clarification that documentation required for the submission of completion data to HUD must be submitted with the final disbursement request by adding paragraph (9) to this subsection as follows:

(9) For final disbursement requests, submission of documentation required for Project completion reports; and

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

§53.72. Single Family Development (SFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Project funds specifying the acquisition cost, construction costs, developer fees. A maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

(B) Identification and resolution of potential and/or existing conflicts of interest;

(C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;

(D) Identification if any Household member owes a debt to the State of Texas;

(E) Identification of head of Household's race and ethnicity;

(F) Household special needs status, if applicable;

(G) Names of Household members who are temporarily absent and reason for absence, if applicable;

(H) Future Household members and explanation, if applicable;

(I) Income sources and gross amounts for all Household members;

(J) Full-time student status of Household members over age 18, if applicable;

(K) Type and source of all assets owned by Household members including cash value and annual asset income;

(L) Year in which property to be assisted was built;

(M) Household's occupancy requirements including number of bedrooms being requested;

(N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and

(O) Signatures of all Household members age 18 or over;

(P) Certification of the income eligibility of the Household signed by the CA, RSP, or Development Owner, and all Household members age 18 or over, and including the date of the income eligibility determination. For TBRA and in instances the total Household income is within $3,000 of the 80% AMFI, all documentation used to determine the income of the Household;

(6) Identification of Lead-Based Paint (LBP);

(7) Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(8) If applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, duplication of benefit, or floodplain mitigation; and

(9) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing. The CA, RSP or Development Owner must submit the following with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

(1) A title commitment to issue a title policy not older than ninety (90) days when submitted for a Commitment of Funds that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(2) Within ninety (90) days after the loan closing date, the Contract Administrator or Development Owner must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within ninety (90) days after the Loan closing date will result in the Department withholding payment for disbursement requests; and

(3) A draft settlement statement that is consistent with the executed sales contract, the first lien mortgage loan requirements (as applicable), and the terms of this Contract will be provided to Department.

(c) Disbursement of funds. The CA or RSP must comply all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement.

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

(2) If required or applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and CA, RSP, or Development Owner;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA, RSP, or Development Owner to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA, RSP, or Development Owner as may be necessary or advisable for compliance with all Program Requirements;

(7) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business

days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(8) Include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction;

(9) For final disbursement requests, submission of documentation required for Project completion reports; and

(10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005315
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER H. MULTIFAMILY (RENTAL HOUSING) DEVELOPMENT (MFD) PROGRAM ACTIVITY

10 TAC §§53.80 - 53.82

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter H, §§53.80 - 53.82, concerning the HOME Investment Partnerships Program. Sections 53.80 - 53.82 are adopted with changes to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6167).

The new sections ensure compliance with all statutory requirements, incorporate public input from the recent HOME Program rule roundtables, remove duplicative federal and statutory requirements, formalize existing policy and guidelines contained in HOME Program manuals, and include recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email.

A public hearing to receive input on the proposed rule was held on August 3, 2010 and public comments were accepted through August 9, 2010, with no public comments received for §§53.80 - 53.82.

STAFF RECOMMENDATIONS ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER H.

§53.80(3)

STAFF RECOMMENDATION: Staff clarified that match is not a requirement for applications received under the Persons with Disabilities set-aside or USDA §515 applications with the following change:

(3) Except for applications awarded under the Persons with Disabilities set-aside or USDA §515 applications, Match equal to 2% of the HOME award must be provided. Documentation of the Applicant's ability to meet this requirement shall be required in the Application in the form of a commitment from the organization providing the Match. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentive may be established in the form of a Threshold or Selection scoring criterion. Match in the form of a property tax abatement will only be accepted if a letter from the applicable appraisal district is provided and such letter documents a cash value and duration for such exemption sufficient to meet the HUD requirements for documentation of Match.

§53.81(b)

STAFF RECOMMENDATION: Staff recommended a correction by replacing the second instance of the term Rehabilitation with the term Reconstruction as follows:

(b) Developments involving New Construction will be limited to no more than 252 total units. This maximum unit limitation also applies to those Developments which involve a combination of Rehabilitation and New Construction. Developments that consist solely of acquisition and Rehabilitation or Reconstruction only may exceed the maximum unit restrictions. The minimum number of units shall be 8 units.

§53.82(b)(9) - (11)

STAFF RECOMMENDATION: Staff must ensure that required HUD reporting can be completed and therefore recommended the clarification that documentation required for the submission of completion data to HUD must be submitted with the final disbursement request by adding paragraph (10) to this section as follows:

(10) For final disbursement requests, submission of documentation required for Project completion reports; and

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

§53.80. Multifamily (Rental Housing) Development (MFD) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with the following:

(1) If the total of Department loans equals more than 50% of the total development cost, except for developments also financed with USDA funds, the Applicant must provide:

(A) Evidence of a line of credit or equivalent financing equal to at least 10% of the total development cost from a financial

institution that is available for use during the proposed development activities; or

(B) A letter from a third party CPA verifying the capacity of the owner or developer to provide at least 10% of the total development cost as a short term loan for development; and

(C) A letter from the developer's or owner's bank(s) confirming funds amounting to 10% of the total development cost are available.

(2) Applications must comply with all of the current Qualified Allocation Plan and Rules in effect at the time of Application's submission at §49.9 or §50.9(h) of this title, excluding paragraphs (4)(A), (J), (8)(A)(ii), (11), (12), (14)(G) and (15) and the requirements of §53.81 of this chapter, and all other federal and state rules.

(3) Except for applications awarded under the Persons with Disabilities set-aside or USDA §515 applications, Match equal to 2% of the HOME award must be provided. Documentation of the Applicant's ability to meet this requirement shall be required in the Application in the form of a commitment from the organization providing the Match. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentive may be established in the form of a Threshold or Selection scoring criterion. Match in the form of a property tax abatement will only be accepted if a letter from the applicable appraisal district is provided and such letter documents a cash value and duration for such exemption sufficient to meet the HUD requirements for documentation of Match.

(4) The maximum HOME award may not exceed 90% of the total development costs ("TDC") unless a resolution of support for the development is made by the local unit of government in which the proposed development resides and/or the proposed development is located in an area where the HUD Fair Market Rents are equal to the respective HOME Rent Limit for a one-bedroom unit but will be limited as reflected in Figure: 10 TAC §53.80(4). The remaining percentage of total development cost must be in the form of permanent loans with a maturity of at least twenty (20) years, in-kind contributions or grants from third-party private or public entities. Developments with USDA or other government-sponsored loans that will remain as permanent financing may be used to satisfy this requirement from a public or private entity. Loans or grants from the Department will not satisfy this requirement.
Figure: 10 TAC §53.80(4)

(5) For Applications proposing New Construction, documentation sufficient to meet the Site and Neighborhood Standards required in 24 CFR §92.202.

§53.81. Multifamily (Rental Housing) Development (MFD) Program Requirements.

(a) Eligible activities include the acquisition or refinancing and New Construction or Rehabilitation of multifamily housing Developments. Housing assisted with HOME funds must meet all applicable codes and standards. Additionally, the Development must meet or exceed the requirements of the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or if no local building codes are in place then to the most recent version of the International Building Code.

(b) Developments involving New Construction will be limited to no more than 252 total units. This maximum unit limitation also applies to those Developments which involve a combination of Rehabilitation and New Construction. Developments that consist solely of acquisition and Rehabilitation or Reconstruction only may exceed the maximum unit restrictions. The minimum number of units shall be 8 units.

(c) This Program Activity is a CHDO-eligible activity.

(d) A Development receiving funds under this section shall have a LURA filed and recorded at the time of Loan closing and prior to any disbursement of HOME funds. The Department may require that a second LURA be filed and recorded if the restrictions to be placed on the Development exceed those of the federal requirements. Such second LURA shall include all of the requirements that exceed the federally required restrictions.

(e) In addition to the federal restrictions, Developments receiving funds under this section must meet the following rent and income restrictions:

(1) At least 20% of the total number of units in the Development must be restricted as HOME units;

(2) At least 5% of the total number of units in the Development must be set-aside for households at or below 30% of AMFI and must have rent restrictions at 30% of AMFI; and

(3) Developments receiving funds under the Persons with Disabilities set-aside are not required to meet the requirements under paragraph (1) or (2) of this subsection but must restrict all HOME units at 50% of AMFI or below and at least 5% of the HOME units at 30% of AMFI or below.

(f) Project funds awarded to Developments under this section shall be structured in the form of a loan or loans as follows:

(1) The interest rate may be as low as 2% provided all requirements of this chapter and §1.32 of this title are met. To the extent that Match in an amount of 5% or more of the HOME funds is provided, an interest rate as low as 0% may be requested;

(2) Unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than twenty (20) years and no greater than forty (40) years;

(3) The loan shall be structured with a regular monthly payment beginning at the end of the construction period and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cashflow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in §1.32 of this title. The Board may also approve, on a case-by-case basis, a cashflow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing; and

(4) The loan shall have a deed of trust with a lien position consistent with the principal amount of the loan in relation to the principal amounts of the other sources of financing. Notwithstanding the foregoing, the loan shall have a lien position that is superior to any other sources of financing that have soft repayment structures, non-amortizing balloon notes, are deferred forgivable loans or in which the lender has an Identity of Interest with any member of the development team. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing.

(g) Closing on the Loan shall be conditioned upon the occurrence of closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules, the HOME Final Rule, and to secure the interests of the Department.

(h) When Department funds have a first lien position, assurance of completion of the development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee. Development Owners also utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA.

(i) All HOME units required under this section shall be restricted as "floating" HOME units in accordance with the meaning ascribed by HUD except for units receiving funds for the development of units for persons with disabilities in which case such units shall be designated "fixed" HOME units. Development Owner must use its best efforts to distribute units reserved for Low Income Families, Very Low Income Families and Extremely Low Income Families among unit sizes in proportion to the distribution of unit sizes in the Property and to avoid concentration of Low Income Families, Very Low Income Families and Extremely Low Income Families in any area or areas of the Property.

§53.82. Multifamily (Rental Housing) Development (MFD) Administrative Requirements.

(a) Loan closing. The Development Owner must submit the following with a request for the preparation of loan closing:

(1) Owner/General Contractor and owner/architect agreements;

(2) Survey of the property reflecting all planned improvements that includes a certification to the Department, Development Owner, title company, and other lenders;

(3) If layered with housing tax credits, a fully executed limited partnership agreement between the general partner and the tax credit investor entity (may be provided concurrent with closing);

(4) Documentation of acceptance of HOME loan by other lenders and financing participants;

(5) A budget that includes the amount of Project funds specifying the acquisition cost, construction costs, developer fees, other soft costs and Match to be provided. The sources of funds used to finance the Development. If the budget or sources of funds reflect material changes that may affect the financial feasibility of the Development, the Department may request additional documentation to ensure that the Development continues to meet the requirements of §1.32 of this title;

(6) Verification of environmental clearance; and

(7) Any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(b) Disbursement of funds. The Development Owner must comply all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Development Owner's compliance with following requirements may be required with a request for disbursement.

(1) Except disbursements for acquisition and closing costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

(2) For hard construction costs, documentation of the total construction costs incurred and costs incurred since the last disbursement of funds. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703;

(3) If applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Development Owner's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) Developer fee schedule. Disbursement of Developer fees will be conditioned as follows:

(A) For Developments in which the Loan is secured by a first lien deed of trust against the property, 75% shall be disbursed in accordance with percent of construction completed (i.e. 75% of the total allowable fee will be multiplied by the percent completion) as documented by the construction contract and as may be verified by an inspection by the Department and 25% shall be disbursed at the time that the property reaches an occupancy of 50% or at release of retainage, whichever is later; or

(B) For Developments in which the Loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits to finance development, Developer fees will not be reimbursed by the Department unless the other lenders and syndicator confirm in writing that they do not have an existing or planned agreement to govern the disbursement of Developer fees and expect that Department funds shall be used to fund Developer fees. Provided this requirement is met, developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) The Department may reasonably withhold any disbursement of developer fees if it is determined that is not progressing as necessary to meet Contract benchmarks or that cost overruns may put the Department's funds or completion within budget at risk. Once a reasonable alternative that is deemed acceptable by the Department has been provided, disbursement of the remaining fee may occur;

(7) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure requested. The Department may request Development Owner to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(8) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement

of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(9) Include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction, a final inspection is completed and clearance is issued by the Department, labor standards final wage compliance report, and receipt of certificates of occupancy for new construction or a certification of completion from the Development architect for rehabilitation;

(10) For final disbursement requests, submission of documentation required for Project completion reports; and

(11) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005317
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

SUBCHAPTER I. COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)

10 TAC §53.90, §53.91

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter I, §53.90 and §53.91, concerning the HOME Investment Partnerships Program without changes to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6170) and will not be republished.

The new sections ensure compliance with all statutory requirements, incorporate public input from the recent HOME Program rule roundtables, remove duplicative federal and statutory requirements, formalize existing policy and guidelines contained in HOME Program manuals, and include recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email.

A public hearing to receive input on the proposed rule was held on August 3, 2010 and public comments were accepted through August 9, 2010, with no public comments received for §53.90 and §53.91.

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005318
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 475-3916

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 7. STATE COMMITTEE OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING INSTRUMENTS

CHAPTER 141. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §§141.1 - 141.25

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) adopts amendments to §§141.1 - 141.24 and new §141.25, concerning the licensing and regulation of fitters and dispensers of hearing instruments. The amendment to §141.12 is adopted with changes to the proposed text as published in the March 12, 2010, issue of the *Texas Register* (35 TexReg 2111). The amendments to §§141.1 - 141.11, 141.13 - 141.24 and new §141.25 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments and new section comply with the requirements of House Bill (HB) 594, 81st Legislature, 2009, which amended Texas Occupations Code, Chapter 402, relating to the licensing and regulation of hearing instrument fitters and dispensers; and comply with the requirements of HB 963, 81st Legislature, 2009, which amended Texas Occupations Code, Chapter 53, relating to the eligibility of certain applicants for occupational licenses.

Additionally, Texas Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Texas Government Code, Chapter 2001 (Administrative Procedure Act). Sections 141.1 - 141.24 have been reviewed and the committee has determined that the reasons for adopting the sections continue to exist because rules relating to the licensure and regulation of hearing instrument fitters and dispensers are needed in order to protect and promote public health, safety, and welfare.

The amendments and new rule are the result of the new statutory requirements and the rule review undertaken by the committee and the committee's staff. In general, each section was reviewed and proposed for amendment in order to ensure clarity; to ensure that the rules reflect current legal, policy, and operational considerations; to ensure accuracy; to improve draftsmanship; and to make the rules more accessible, understandable, and usable, to the extent possible.

SECTION BY SECTION SUMMARY

Amendments to §141.1 improve draftsmanship. Amendments to §141.2(6) delete an obsolete definition of "bill of sale;" revise §141.2(4), (17), (18), and (28) for consistency; and update the definitions of "supervisor" and "temporary training permit" to reflect the statutory changes enacted by HB 594.

Amendments to §141.3 update procedural rules relating to the committee's operation to ensure accuracy and to reflect current operational considerations. Amendments to §141.4 delete an obsolete requirement relating to academic degrees. Amendments to §141.5 rename the section in order to clarify its content, and improve draftsmanship. Amendments to §141.6 delete an obsolete requirement and require a new fee of $50 for a person who requests a criminal history evaluation letter in accordance with HB 963.

Amendments to §141.7 update and clarify the section, and incorporate new statutory language regarding approved supervisors required by HB 594. Amendments to §141.8 update and clarify the section; incorporate new statutory language regarding approved supervisors required by HB 594; clarify the information that must be submitted upon completion of the 160 hours of training; require 20 hours of continuing education for apprentice permit holders in accordance with HB 594; and improve draftsmanship. Amendments to §141.9 update the section to reflect current operating procedures.

Amendments to §141.10 incorporate the new statutory language concerning licensing of persons who hold licenses issued by another state found in HB 594, and designate the committee-approved examination and certification referenced in the bill.

The amendment to §141.11 modifies the section title. Amendments to §141.12 update the section to reflect current operating procedure. Amendments to §141.13 update the section to reflect current operating procedure and to reflect the new statutory language concerning proof of calibration or certification of equipment found in HB 594.

Amendments to §141.14 and §141.15 improve draftsmanship. Amendments to §141.16 clarify requirements relating to the 30-day trial period expiration date; and incorporate new statutory language relating to the written contract and business records required by HB 594. Amendments to §141.17 improve section organization. Amendments to §141.18 improve draftsmanship and update the section to reflect current operating procedure.

Amendments to §§141.19 - 141.21 improve draftsmanship and update the sections to reflect current operating procedure. Amendments to §141.22 clarify ethical responsibilities of license holders and improve the section's organization. Amendments to §141.23 and §141.24 improve draftsmanship and clarity of the sections. New §141.25 sets out requirements and procedures for the issuance of criminal history evaluation letters, in accordance with HB 963.

COMMENTS

The committee has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. The commenters were individuals and an association, including the Texas Hearing Aid Association. The commenters were not against the rules in their entirety; however, the commenters suggested some recommendations for change as discussed in the summary of comments.

Comment: Regarding §141.2, two commenters recommended adding a definition of "resident of Texas" to clarify this term for new applicants.

Response: The committee disagrees. If a person has an identification card or driver's license issued by the Texas Department of Public Safety and it reflects a Texas address for that person, the requirement is met. No changes were made as a result of the comments.

Comment: Regarding §141.3(h)(5) and §141.7(2)(B), one commenter stated that the terms "applications subcommittee" and "subcommittee" should be replaced by "committee."

Response: The committee disagrees and has authorized, by rule, that the applications subcommittee may complete certain tasks. This authorization results in efficiency of the committee's operations. No change was made as a result of the comment.

Comment: Regarding §141.8(a)(9), two commenters stated that notarization of a document doesn't accomplish anything and the signature should be sufficient.

Response: The committee disagrees. When a person signs a document before a notary, they are affirming its accuracy. The committee believes it is important for the training hours to be accurate and for a supervisor to take responsibility for the accuracy of the report of training to be submitted to the committee. No changes were made as a result of the comments.

Comment: Regarding §141.8(b), one commenter recommended language to rewrite the rule, stating that the recommended language is simpler, easier to understand, and removes redundancies.

Response: While the committee appreciates the effort spent in rewriting this rule, the committee disagrees and believes that the language originally proposed is the language that should be adopted. No change was made as a result of the comment.

Comment: Regarding §141.8(b)(7), two commenters recommended that the word "classroom" should be deleted.

Response: The committee disagrees. The inclusion of the word distinguishes between on-the-job training and a formal, structured educational experience. No changes were made as a result of the comments.

Comment: Regarding §141.9(a)(2), one commenter recommended a grammar change.

Response: The committee will keep this modification in mind for the future, as this section of the rule was not proposed for amendment. No change was made as a result of the comment.

Comment: Regarding §141.10(c)(3), two commenters are opposed to this rule and do not believe that a person should be required to be a resident of Texas in order to qualify for a license.

Response: The committee disagrees. The requirement for Texas residency is a statutory provision (Texas Occupations Code, §402.209(c)(3)), which the committee is required to enforce. No changes were made as a result of the comments.

Comment: Regarding §141.10(e), two commenters recommended that an applicant should be allowed to take the examination at the same meeting at which their application is approved.

Response: The committee disagrees. This rule implements a statutory provision (Texas Occupations Code, §402.209(e)), which the committee is required to enforce. No changes were made as a result of the comments.

Comment: Two commenters oppose §141.10(i) and stated that the committee does not have the authority to adopt this rule, as it is unconstitutional.

Response: The committee disagrees. Texas Occupations Code, §402.209(i), provides that "The committee may not issue a license under this section to an applicant who is a licensed audiologist in another state. The committee shall refer the applicant to the State Board of Examiners for Speech-Language Pathology and Audiology." The rule mirrors this statutory language. No changes were made as a result of the comments.

Comment: Regarding §141.11, two commenters stated that this section, regarding Filing of a Bond, should be removed, as it is never used and it is uncertain as to whether all owners are bonded.

Response: The committee disagrees. This section implements a statutory provision (Texas Occupations Code, §402.404), which the committee is required to enforce. No changes were made as a result of the comments.

Comment: Regarding §141.12(b)(1), one commenter recommended new language that would allow the executive director to accept and void a surrendered license at the time it is offered for surrender, instead of requiring committee approval of the surrender at its next scheduled meeting.

Response: The committee agrees and has made the suggested modification to §141.12(b)(1).

Comment: Regarding §141.13(c)(13), two commenters are opposed to the proposed amendment and stated that there are many pieces of equipment not used in the testing of hearing acuity that also need calibration. The commenters also asked questions regarding requirements for qualified technicians.

Response: The committee disagrees. This section implements a statutory provision (Texas Occupations Code, §402.301(f)), which the committee is required to enforce. No changes were made as a result of the comments.

Comment: Regarding §141.14(b)(3), two commenters are concerned that the committee's criteria for approval of continuing education providers is too difficult.

Response: The committee disagrees and believes it approval criteria is appropriate. No changes were made as a result of the comments.

Comment: Regarding §141.14(d)(3), one commenter made recommendations for changes to the language of the rule.

Response: This section of the rule was not proposed for amendment. No change was made as a result of the comment.

Comment: Regarding §141.16(a), two commenters stated that the rule needs to be deleted because this is a federal issue and does not apply to Texas license holders.

Response: The committee disagrees regarding the applicability of the rule. No changes were made as a result of the comments.

Comment: Regarding §141.16(b), two commenters recommended adding language authorizing the committee to order a refund to a consumer.

Response: The committee disagrees, because the authority to order a refund is not authorized by the committee's enabling statute. No changes were made as a result of the comments.

Comment: Regarding §141.16(b)(4), two commenters agree with the intent of the rule, but stated that it needs clarification. The commenters pointed out that the rule does not require that the information must be delivered to the patient.

Response: The committee disagrees. The rule references stating information in writing upon delivery of a new hearing instrument. No changes were made as a result of the comments.

Comment: Regarding §141.16(b)(4), one commenter recommended deletion of the rule and stated that it is not necessary and will result in additional paperwork for license holders.

Response: The committee disagrees. The committee carefully considered the wording of the rule, as well as possible burdens it may place on license holders. The rule will provide an important public protection mechanism for consumers who receive new hearing instruments and is consistent with other similar rules. The committee believes that the additional documentation which will be required is minimal and will not impose an undue burden upon license holders. No change was made as a result of the comment.

Comment: Regarding §141.16(c), two commenters did not suggest a change to the rule and did not voice opposition to it, but asked questions regarding its applicability and implementation.

Response: The committee is aware of the issues raised by the questions. No changes were made as a result of the comments.

Comment: Regarding §141.16(c), one commenter recommended replacing the language of the rule with the language of the statute.

Response: The committee disagrees. The language of the rule is intended to clarify the procedures for written contracts for hearing instruments and is necessary to inform both consumers and license holders of the expectations required for such contracts. No change was made as a result of the comment.

Comment: Regarding §141.16(c)(11), two commenters recommended a change to the rule and stated that a license holder cannot obtain a serial number on a custom product and that it is too early in the transaction to get the follow-up appointment on the contract.

Response: The committee disagrees. The only change proposed to this rule is a punctuation change and the requirement is not a new requirement. The rule is appropriate. No changes were made as a result of the comments.

Comment: Regarding §141.16(e)(1), two commenters questioned how amendments could be proposed that are already in the rules.

Response: The committee determined the language in question is not currently in the rules and it was added through this rulemaking proposal. No changes were made as a result of the comments.

Comment: Regarding §141.16(f), two commenters expressed support for the rule.

Response: The committee acknowledges the commenter's support for the rules. No changes were made as a result of the comments.

Comment: Regarding §141.16(f), two commenters did not voice opposition to the rule, but asked clarifying questions.

Response: No changes were made as a result of the comments.

Comment: Regarding §141.22(c)(4), two commenters stated the rule should be deleted, as it does not apply to the hearing aid industry.

Response: The committee disagrees regarding the applicability of the rule. No changes were made as a result of the comments.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments and new rule are authorized by Texas Occupations Code, §402.102, which authorizes the committee to adopt rules necessary for the performance of the committee's duties; and Texas Occupations Code, Chapter 53, which authorizes the adoption of rules regarding fees for criminal history evaluations letters.

§141.12. Surrender of a License or Permit.

(a) Surrender by licensee or permit holder.

(1) A licensee or permit holder may at any time voluntarily offer to surrender his or her license or permit for any reason.

(2) The license or permit may be delivered to the committee office in person or by mail.

(3) If no complaint is pending, the committee office may accept the surrender and void the license or permit.

(b) Formal disciplinary action.

(1) When a licensee or permit holder has offered the surrender of his or her license or permit after a complaint has been filed, the executive director shall accept and void the surrendered license immediately.

(2) When the committee has accepted such a surrender, the surrender is deemed to be the result of a formal disciplinary action and a committee order accepting the surrender may be prepared.

(c) Reinstatement. A license which has been surrendered may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2010.

TRD-201005235

Ken Haesly

Chair

State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Effective date: September 28, 2010

Proposal publication date: March 12, 2010

For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

PART 9. TEXAS MEDICAL BOARD

CHAPTER 190. DISCIPLINARY GUIDELINES

SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board (Board) adopts amendments to §190.8, concerning Violation Guidelines, with nonsubstantive changes to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6183). The text of the rule will be republished.

The amendments to §190.8 provide that (1) a physician-patient relationship is not necessary when a physician prescribes medications to a patient's family members if the patient has an illness determined to be pandemic; and (2) unprofessional conduct includes contacting a member of a peer review body for purposes of intimidation in relation to a board investigation. The nonsubstantive changes to the rule relate to what entities are responsible for determining when a pandemic occurs.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting, held on May 17, 2010. The comments were incorporated into the proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on August 27, 2010, regarding §190.8.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

§190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) failure to treat a patient according to the generally accepted standard of care;

(B) negligence in performing medical services;

(C) failure to use proper diligence in one's professional practice;

(D) failure to safeguard against potential complications;

(E) improper utilization review;

(F) failure to timely respond in person when on-call or when requested by emergency room or hospital staff;

(G) failure to disclose reasonably foreseeable side effects of a procedure or treatment;

(H) failure to disclose reasonable alternative treatments to a proposed procedure or treatment;

(I) failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, or procedures;

(J) termination of patient care without providing reasonable notice to the patient;

(K) prescription or administration of a drug in a manner that is not in compliance with Chapter 200 of this title (relating to Standards for Physicians Practicing Complementary and Alternative Medicine) or, that is either not approved by the Food and Drug Administration (FDA) for use in human beings or does not meet standards for off-label use, unless an exemption has otherwise been obtained from the FDA;

(L) prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with the patient.

(i) A proper relationship, at a minimum requires:

(I) establishing that the person requesting the medication is in fact who the person claims to be;

(II) establishing a diagnosis through the use of acceptable medical practices such as patient history, mental status examination, physical examination, and appropriate diagnostic and laboratory testing. An online or telephonic evaluation by questionnaire is inadequate;

(III) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(IV) ensuring the availability of the licensee or coverage of the patient for appropriate follow-up care.

(ii) A proper professional relationship is also considered to exist between a patient certified as having a terminal illness and who is enrolled in a hospice program, or another similar formal program which meets the requirements of subclauses (I) through (IV) of this clause, and the physician supporting the program. To have a terminal condition for the purposes of this rule, the patient must be certified as having a terminal illness under the requirements of 40 TAC §97.403 (relating to Standards Specific to Agencies Licensed to Provide Hospice Service) and 42 CFR 418.22.

(iii) Notwithstanding the provisions of this subparagraph, establishing a professional relationship is not required for:

(I) a physician to prescribe medications for sexually transmitted diseases for partners of the physician's established patient, if the physician determines that the patient may have been infected with a sexually transmitted disease; or

(II) a physician to prescribe medications to a patient's family members if the patient has an illness determined by the Centers for Disease Control and Prevention, the World Health Organization, or the Governor's office to be pandemic.

(M) inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following:

(i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and

(ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

(N) providing on-call back-up by a person who is not licensed to practice medicine in this state or who does not have adequate training and experience.

(2) Unprofessional and Dishonorable Conduct. Unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes, but is not limited to:

(A) violating a board order;

(B) failing to comply with a board subpoena or request for information or action;

(C) providing false information to the board;

(D) failing to cooperate with board staff;

(E) engaging in sexual contact with a patient;

(F) engaging in sexually inappropriate behavior or comments directed towards a patient;

(G) becoming financially or personally involved with a patient in an inappropriate manner;

(H) referring a patient to a facility without disclosing the existence of the licensee's ownership interest in the facility to the patient;

(I) using false, misleading, or deceptive advertising;

(J) providing medically unnecessary services to a patient or submitting a billing statement to a patient or a third party payer that the licensee knew or should have known was improper. "Improper" means the billing statement is false, fraudulent, misrepresents services provided, or otherwise does not meet professional standards;

(K) behaving in an abusive or assaultive manner towards a patient or the patient's family or representatives that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(L) failing to timely respond to communications from a patient;

(M) failing to complete the required amounts of CME;

(N) failing to maintain the confidentiality of a patient;

(O) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law;

(P) behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members or others that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(Q) entering into any agreement whereby a licensee, peer review committee, hospital, medical staff, or medical society is restricted in providing information to the board; and

(R) commission of the following violations of federal and state laws whether or not there is a complaint, indictment, or conviction:

(i) any felony;

(ii) any offense in which assault or battery, or the attempt of either is an essential element;

(iii) any criminal violation of the Medical Practice Act or other statutes regulating or pertaining to the practice of medicine;

(iv) any criminal violation of statutes regulating other professions in the healing arts that the licensee is licensed in;

(v) any misdemeanor involving moral turpitude as defined by paragraph (6) of this section;

(vi) bribery or corrupt influence;

(vii) burglary;

(viii) child molestation;

(ix) kidnapping or false imprisonment;

(x) obstruction of governmental operations;

(xi) public indecency; and

(xii) substance abuse or substance diversion.

(S) contacting or attempting to contact a complainant, witness, medical peer review committee member, or professional review body as defined under §160.001 of the Act regarding statements used in an active investigation by the board for purposes of intimidation. It is not a violation for a licensee under investigation to have contact with a complainant, witness, medical peer review committee member, or professional review body if the contact is in the normal course of business and unrelated to the investigation.

(3) Disciplinary actions by another state board. A voluntary surrender of a license in lieu of disciplinary action or while an investigation or disciplinary action is pending constitutes disciplinary action within the meaning of the Act. The voluntary surrender shall be considered to be based on acts that are alleged in a complaint or stated in the order of voluntary surrender, whether or not the licensee has denied the facts involved.

(4) Disciplinary actions by peer groups. A voluntary relinquishment of privileges or a failure to renew privileges with a hospital, medical staff, or medical association or society while investigation or a disciplinary action is pending or is on appeal constitutes disciplinary action that is appropriate and reasonably supported by evidence submitted to the board, within the meaning of §164.051(a)(7) the Act.

(5) Repeated or recurring meritorious health care liability claims. It shall be presumed that a claim is "meritorious," within the meaning of §164.051(a)(8) of the Act, if there is a finding by a judge or jury that a licensee was negligent in the care of a patient or if there is a settlement of a claim without the filing of a lawsuit or a settlement of a lawsuit against the licensee in the amount of $50,000 or more. Claims are "repeated or recurring," within the meaning of §164.051(a)(8) of the Act, if there are three or more claims in any five-year period. The date of the claim shall be the date the licensee or licensee's medical liability insurer is first notified of the claim, as reported to the board pursuant to §160.052 of the Act or otherwise.

(6) Discipline based on Criminal Conviction. The board is authorized by the following separate statutes to take disciplinary action against a licensee based on a criminal conviction:

(A) Felonies.

(i) Section 164.051(a)(2)(B) of the Medical Practice Act, §204.303(a)(2) of the Physician Assistant Act, and §203.351(a)(7) of the Acupuncture Act, (collectively, the "Licensing Acts") authorize the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any felony.

(ii) Chapter 53, Texas Occupations Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a felony that directly relates to the duties and responsibilities of the licensed occupation.

(iii) Because the provisions of the Licensing Acts may be based on either conviction or a form of deferred adjudication, the board determines that the requirements of the Act are stricter than the requirements of Chapter 53 and, therefore, the board is not required to comply with Chapter 53, pursuant to §153.0045 of the Act.

(iv) Upon the initial conviction for any felony, the board shall suspend a physician's license, in accordance with §164.057(a)(1)(A), of the Act.

(v) Upon final conviction for any felony, the board shall revoke a physician's license, in accordance with §164.057(b) of the Act

(B) Misdemeanors.

(i) Section 164.051(a)(2)(B) of the Act authorizes the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any misdemeanor involving moral turpitude.

(ii) Chapter 53, Texas Occupations Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

(iii) For a misdemeanor involving moral turpitude, the provisions of §164.051(a)(2) of the Medical Practice Act and §205.351(a)(7) of the Acupuncture Act, may be based on either conviction or a form of deferred adjudication, and therefore the board determines that the requirements of these licensing acts are stricter than the requirements of Chapter 53 and the board is not required to comply with Chapter 53, pursuant to §153.0045 of the Act.

(iv) The Medical Practice Act and the Acupuncture Act do not authorize disciplinary action based on conviction for a misdemeanor that does not involve moral turpitude. The Physician Assistant Act does not authorize disciplinary action based on conviction for a misdemeanor. Therefore these licensing acts are not stricter than the requirements of Chapter 53 in those situations. In such situations, the conviction will be considered to directly relate to the practice of medicine if the act:

(I) arose out of the practice of medicine, as defined by the Act;

(II) arose out of the practice location of the physician;

(III) involves a patient or former patient;

(IV) involves any other health professional with whom the physician has or has had a professional relationship;

(V) involves the prescribing, sale, distribution, or use of any dangerous drug or controlled substance; or

(VI) involves the billing for or any financial arrangement regarding any medical service;

(v) Misdemeanors involving moral turpitude. Misdemeanors involving moral turpitude, within the meaning of the Act,

are those that involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflect adversely on a licensee's honesty, trustworthiness, or fitness to practice under the scope of the person's license.

(C) In accordance with §164.058 of the Act, the board shall suspend the license of a licensee serving a prison term in a state or federal penitentiary during the term of the incarceration regardless of the offense.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005300
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.6

The Texas Medical Board (Board) adopts amendments to §193.6, concerning Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses, with nonsubstantive changes to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6184). The text of the rule will be republished.

The amendments to §193.6 clarify that physicians who delegate to certified registered nurse anesthetists (CRNAs) who only sign or carry out prescription drug orders are not required to register with the Board. The Board has determined that the clarification is necessary, based on the interpretation of Texas Occupations Code §157.0711(b-1) to not apply to CRNAs who are providing anesthesia services through the use of medication orders.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting, held on May 17, 2010. The comments were incorporated into the proposed rules.

The Board received public written comments; however, no one appeared to testify at the public hearing held on August 27, 2010,

The Board received comments regarding §193.6 from the Texas Association of Nurse Anesthetists (TANA).

COMMENT:

TANA commented that the proposed language should be amended as the proposed language suggests that advanced practice nurses who are delegated prescriptive authority are obligated to register with the Medical Board. However, Texas Occupations Code §157.0511(b-1) requires physicians, not APNs, who delegate prescriptive authority to APNs to register with the Medical Board.

The Board has responded to this comment by amending the language to reflect that the responsibility to register an APN is on the delegating physician, not the APN. The Board believes that this revision will satisfy the concerns expressed by this comment.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

§193.6. Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses.

(a) Purpose. The purpose of this section is to provide guidelines for implementation of the Medical Practice Act ("the Act"), Texas Occupations Code Annotated, §§157.051 - 157.060, which provide for the use by physicians of standing delegation orders, standing medical orders, physician's orders, or other orders or protocols in delegating authority to physician assistants or advanced practice nurses at a site serving medically underserved populations, at a physician's primary practice or alternate practice site, or at a facility-based practice site. This section establishes minimum standards for supervision by physicians when delegating prescriptive authority to physician assistants and advanced practice nurses at such sites. This section also provides for the signing of a prescription by an advanced practice nurse or a physician assistant after the person has been designated by the delegating physician as a person delegated to sign a prescription which may be carried out by a physician assistant or advanced practice nurse according to protocols. Such protocols may authorize diagnosis of the patient's condition and treatment, including prescription of dangerous drugs or controlled substances Schedules III - V as provided under subsection (n) of this section. Proper use of protocols allows integration of clinical data gathered by the physician assistant or advanced practice nurse. Neither the Act, §§157.051 - 157.060, nor these rules authorize the exercise of independent medical judgment by physician assistants or advanced practice nurses, and the delegating physician remains responsible to the board and to his or her patients for acts performed under the physician's delegated authority. Advanced practice nurses and physician assistants remain professionally responsible for acts performed under the scope and authority of their own licenses.

(b) Delegation of prescriptive authority at site serving underserved populations.

(1) Acts that may be delegated. At a site serving a medically underserved population, a physician authorized by the board may delegate to a physician assistant or an advanced practice nurse the act or acts of administering, providing, or carrying out or signing a prescription drug order as authorized through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board. Providing and carrying out or signing a prescription drug order under this subdivision is limited to dangerous drugs and controlled substances Schedules III - V as provided under subsection (n) of this section, and shall comply with other applicable laws.

(2) Physician supervision at site serving medically underserved populations. Physician supervision of a physician assistant or an advanced practice nurse at a site serving a medically underserved population will be adequate if a delegating physician:

(A) receives a daily status report to be conveyed in person, by telephone, or by radio from the advanced practice nurse or physician assistant on any complications or problems encountered that are not covered by a protocol;

(B) visits the clinic in person at least once every ten business days during regular business hours during which the advanced practice nurse or physician assistant is on site providing care, in order

to observe and provide medical direction and consultation to include, but not be limited to:

(i) reviewing with the physician assistant or advanced practice nurse the case histories of patients with problems or complications encountered;

(ii) personally diagnosing or treating patients requiring physician follow-up; and

(iii) verifying that patient care is provided by the clinic in accordance with a written quality assurance plan on file at the clinic, which includes a random review and countersignature of at least 10% of the patient charts by the physician;

(C) is available by telephone or direct telecommunication for consultation, assistance with medical emergencies, or patient referrals; and

(D) is responsible for the formulation or approval of such physician's orders, standing medical orders, standing delegation orders, or other orders or protocols and periodically reviews such orders and the services provided to patients under such orders.

(3) Supervision of clinics. A physician may not supervise more than three clinics serving medically underserved populations without approval of the board. A physician may not supervise any number of clinics with combined regular business hours exceeding 150 concurrent hours per week without approval of the board.

(c) Delegation of prescriptive authority at primary practice site.

(1) "Primary practice site" means:

(A) the practice location where the physician spends the majority of the physician's time;

(B) a licensed hospital, long-term care facility, or adult care center where both the physician and the physician assistant or advanced practice nurse are authorized to practice;

(C) a clinic operated by or for the benefit of a public school district for the purpose of providing care to the students of that district and the siblings of those students, if consent to treatment at that clinic is obtained in a manner that complies with the Family Code, Chapter 32;

(D) an established patient's residence;

(E) where the physician is physically present with the physician assistant or advanced practice nurse; or

(F) a location where a physician assistant or advanced practice nurse who practices on-site with the physician more than 50 percent of the time and provides:

(i) health care services for established patients;

(ii) without remuneration, voluntary charity health care services at a clinic run or sponsored by a nonprofit organization; or

(iii) without remuneration, voluntary health care services during a declared emergency or disaster at a temporary facility operated or sponsored by a governmental entity or nonprofit organization and established to serve persons in Texas.

(2) Acts that may be delegated. At a physician's primary practice site, a licensed physician authorized by the board may delegate to a physician assistant or an advanced practice nurse acting under adequate physician supervision the act or acts of administering, providing, carrying out or signing a prescription drug order as authorized through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board. Providing and carrying out or signing a prescription drug order under this subdivision is limited to dangerous drugs and controlled substances Schedules III - V as provided in subsection (n) of this section, and shall comply with other applicable laws.

(3) Physician supervision. Physician supervision of the carrying out and signing of prescription drug orders shall conform to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the advanced practice nurse or physician assistant. A physician shall provide continuous supervision, but the constant physical presence of the physician is not required.

(4) Additional limitations. A physician's authority to delegate the carrying out or signing of a prescription drug order under this subsection is limited to:

(A) four physician assistants or advanced practice nurses or their full-time equivalents practicing at the physician's primary or alternate practice site, unless a waiver is granted under subsection (i) of this section; and

(B) the patients with whom the physician has established or will establish a physician-patient relationship, but this shall not be construed as requiring the physician to see the patient within a specific period of time.

(d) Delegation of prescriptive authority at a physician's alternate practice site.

(1) "Alternate practice site" means a site:

(A) where services similar to the services provided at the delegating physician's primary practice site are provided; and

(B) located within 75 miles of the delegating physician's residence or primary practice site.

(2) Acts that may be delegated. At a physician's alternate practice site, a licensed physician authorized by the board may delegate to a physician assistant or an advanced practice nurse acting under adequate physician supervision the act or acts of administering, providing, carrying out or signing a prescription drug order as authorized through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board. Providing, carrying out or signing a prescription drug order under this subsection is limited to dangerous drugs and controlled substances Schedules III - V as provided in subsection (n) of this section, and shall comply with other applicable laws.

(3) Physician supervision is adequate for the purposes of this subsection if the delegating physician:

(A) is on-site with the advanced practice nurse or physician assistant at least 10 percent of the hours of operation of the site each month that the physician assistant or advanced practice nurse is acting with delegated prescriptive authority and is available while on-site to see, diagnose, treat, and provide care to those patients for services provided to or to be provided by the physician assistant or advanced practice nurse to whom the physician has delegated prescriptive authority;

(B) randomly reviews at least 10 percent of the medical charts, including through electronic review of the charts from a remote location, of patients seen by a physician assistant or advanced practice nurse at the site;

(C) is available through direct telecommunication for consultation, patient referral, or assistance with a medical emergency; and

(D) is not prohibited by contract from seeing, diagnosing, or treating a patient for services provided or to be provided by the physician assistant or advanced practice nurse under delegated prescriptive authority.

(4) A physician may not delegate to a combined number of more than four physician assistants or advanced practice nurses or their full-time equivalents at the physician's primary and alternate practice sites, unless a waiver is granted under subsection (i) of this section.

(e) Delegation of prescriptive authority at a facility-based practice site.

(1) Acts that may be delegated. A licensed physician authorized by the board shall be authorized to delegate, to one or more physician assistants or advanced practice nurses acting under adequate physician supervision whose practice is facility based at a licensed hospital or licensed long-term care facility, the carrying out or signing of prescription drug orders if the physician is the medical director or chief of medical staff of the facility in which the physician assistant or advanced practice nurse practices, the chair of the facility's credentialing committee, a department chair of a facility department in which the physician assistant or advanced practice nurse practices, or a physician who consents to the request of the medical director or chief of medical staff to delegate the carrying out or signing of prescription drug orders at the facility in which the physician assistant or advanced practice nurse practices. Providing and carrying out or signing a prescription drug order under this subdivision is limited to dangerous drugs and controlled substances Schedules III - V as provided in subsection (n) of this section, and shall comply with other applicable laws.

(2) Limitations on authority to delegate. A physician's authority to delegate under this subsection is limited as follows:

(A) the delegation is pursuant to a physician's order, standing medical order, standing delegation order, or other order or protocol developed in accordance with policies approved by the facility's medical staff or a committee thereof as provided in facility bylaws;

(B) the delegation occurs in the facility in which the physician is the medical director, the chief of medical staff, the chair of the credentialing committee, or a department chair;

(C) the delegation does not permit the carrying out or signing of prescription drug orders for the care or treatment of the patients of any other physician without the prior consent of that physician;

(D) delegation in a long-term care facility must be by the medical director and the medical director is limited to delegating the carrying out and signing of prescription drug orders to no more than four advanced practice nurses or physician assistants or their full-time equivalents; and

(E) under this section, a physician may not delegate at more than one licensed hospital or more than two long-term care facilities unless approved by the board.

(3) Physician supervision. Physician supervision of the carrying out and signing of a prescription drug order shall conform to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the advanced practice nurse or physician assistant. A physician shall provide continuous supervision, but the constant physical presence of the physician is not required.

(f) Documentation of supervision.

(1) A physician shall document any delegation of prescriptive authority to a physician assistant or advanced practice nurse by a protocol, as defined in this section. The physician shall also maintain a permanent record of all protocols the physician has signed, showing to whom the delegation was made and the dates of the original delegation, each annual review, and termination.

(2) If the physician assistant or advanced practice nurse is located at a site other than the site where the physician spends the majority of the physician's time, physician supervision shall be further documented by a permanent record showing the names or identification numbers of patients discussed during the daily status reports, the times when the physician is on site, and a summary of what the physician did while on site. The summary shall include a description of the quality assurance activities conducted and the names of any patients seen or whose case histories were reviewed with the physician assistant or advanced practice nurse. The supervising physician shall sign the documentation at the conclusion of each site visit. Documentation is not required if the physician assistant or advanced practice nurse is permanently located with the physician at a site where the physician spends the majority of the physician's time.

(3) Physicians that delegate the carrying out or signing of a prescription drug order must register with the board the name and license number of the physician assistant or advanced practice nurse to whom the delegation is made. A physician who delegates to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the certified registered anesthetist to administer an anesthetic or an anesthesia-related service is not required to register the name and license number of the certified registered nurse anesthetist with the board.

(g) Alternate physicians. If a delegating physician will be unavailable to supervise the physician assistant or advanced practice nurse as required by this section, arrangements shall be made for another physician to provide that supervision. The alternate (substitute) physician providing that supervision shall affirm in writing and document through a permanent record where the physician assistant or advanced practice nurse is located that he or she is familiar with the protocols or standing delegation orders in use and is accountable for adequately supervising prescriptive delegation provided pursuant to those protocols or standing delegation orders. The permanent record shall be kept with the protocols or standing orders. The permanent record shall contain dates of the alternate physician supervision and be signed by the alternate physician acknowledging this responsibility. The physician assistant or advanced practice nurse is responsible for verifying that the alternate physician is a licensed Texas physician holding an unrestricted and active license.

(h) Prescription forms. Prescription forms shall comply with applicable rules adopted by the Texas State Board of Pharmacy. Prescriptions issued pursuant to this section may only be written for dangerous drugs and controlled substances Schedules III - V as provided in subsection (n) of this section. A delegating physician is responsible for devising and enforcing a system to account for and monitor the issuance of prescriptions under the physician's supervision.

(i) Waivers.

(1) The board may waive or modify any of the site or supervision requirements for a physician to delegate the carrying out or signing of prescription drug orders to an advanced practice nurse of physician assistant at facilities serving medically underserved populations, at physician primary and alternate practice sites, and at facility-based practice sites.

(2) The board may grant a waiver under paragraph (1) of this subsection if the board determines that:

(A) the practice site where the physician is seeking to delegate prescriptive authority is unable to meet the requirements of Chapter 157 of the Act or this section, or compliance would cause an undue burden without a corresponding benefit to patient care;

(B) safeguards exist for patient care and for fostering a collaborative practice between the physician and the advanced practice nurses and physician assistants; and

(C) if the requirement for which the waiver is sought is the amount of time the physician is on-site, the frequency and duration of time the physician is on-site when the advanced practice nurse or physician assistant is present is sufficient for collaboration to occur, taking into consideration the other ways the physician collaborates with the advanced practice nurse or physician assistant at other sites.

(3) If the board determines that the types of health care services provided by a physician assistant or advanced practice nurse at an alternate practice site as described in subsection (d) of this section are limited in nature and duration and are within the scope of delegated authority, and that patient health care will not be adversely affect, the board may modify or waive:

(A) the limitation on the number of physician assistants or advanced practice nurses, or their full-time equivalents, if the board does not authorize more than six physician assistants or advanced practice nurses or their full-time equivalents;

(B) the mileage limitation; or

(C) the onsite-supervision requirements, except that the physician must be available on-site at regular intervals and when on-site must be available to treat patients.

(4) The board may not waive the limitation on the number of primary or alternate practice sites at which a physician may delegate the carrying out or signing of prescription drug orders or the number of advanced practice nurses or physician assistants to whom a physician may delegate the carrying out or signing of prescription drugs orders, except as provided in paragraph (3)(A) of this subsection.

(5) Procedure.

(A) A physician may apply for a waiver by submitting a written request to the licensure division of the board via the agency website, email, or regular mail. The request shall then be submitted to the board for review.

(B) The Standing Orders Committee of the board shall review requests for waivers and may recommend to the full board that a waiver be granted, denied or modified.

(C) The board may grant a waiver only if the board determines good cause exists to grant a waiver.

(D) The board may approve a waiver with modifications.

(E) If the board denies a waiver, a written explanation for the denial shall be given to the physician along with any recommended modifications that would make the waiver application acceptable.

(F) The board may revoke, suspend or modify a waiver previously granted after providing the physician notice and opportunity for a hearing as provided for by the Administrative Procedure Act and Chapter 187 of this title (relating to Procedural Rules).

(6) A modification or waiver granted under this subsection may not validate or authorize a contract provision that prohibits a physician from seeing, diagnosing, or treating any patient.

(j) Violations. Violation of this section by the delegating physician may result in a refusal to approve supervision or the cancellation of the physician's authority to delegate to a physician assistant or an advanced practice nurse under this section. Violation of this section may also subject the physician to disciplinary action as provided by the Act, §164.001, for violation of §164.051. If an advanced practice nurse violates this section or the Act, §§157.051 - 157.060, the board shall promptly notify the Texas Board of Nurse Examiners of the alleged violation. If a physician assistant violates this section or the Act, §§157.051 - 157.060, the board shall promptly notify the Texas Physician Assistant Board.

(k) Delegation to certified registered nurse anesthetists.

(1) In a licensed hospital or ambulatory surgical center a physician may delegate to a certified registered nurse anesthetist the ordering of drugs and devices necessary for a certified registered nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by the physician. The physician's order for anesthesia or anesthesia-related services does not have to be drug-specific, dose-specific, or administration-technique-specific. Pursuant to the order and in accordance with facility policies or medical staff bylaws, the nurse anesthetist may select, obtain, and administer those drugs and apply the appropriate medical devices necessary to accomplish the order and maintain the patient within a sound physiological status.

(2) This paragraph shall be liberally construed to permit the full use of safe and effective medication orders to utilize the skills and services of certified registered nurse anesthetists.

(l) Delegation related to obstetrical services.

(1) A physician may delegate to a physician assistant offering obstetrical services and certified by the board as specializing in obstetrics or an advanced practice nurse recognized by the Texas State Board of Nurse Examiners as a nurse midwife the act or acts of administering or providing controlled substances to the nurse midwife's or physician assistant's clients during intra-partum and immediate post-partum care. The physician shall not delegate the use of a prescription sticker or the use or issuance of an official prescription form relating to the prescription of Schedule II controlled substance as described under §481.075 of the Health and Safety Code.

(2) The delegation of authority to administer or provide controlled substances under this paragraph must be under a physician's order, medical order, standing delegation order, or protocol which shall require adequate and documented availability for access to medical care.

(3) The physician's orders, medical orders, standing delegation orders, or protocols shall provide for reporting or monitoring of client's progress including complications of pregnancy and delivery and the administration and provision of controlled substances by the nurse midwife or physician assistant to the clients of the nurse midwife or physician assistant.

(4) The authority of a physician to delegate under this paragraph is limited to:

(A) four nurse midwives or physician assistants or their full-time equivalents; and

(B) the designated facility at which the nurse midwife or physician assistant provides care.

(5) The administering or providing of controlled substances under this paragraph shall comply with other applicable laws.

(6) In this paragraph, "provide" means to supply one or more unit doses of a controlled substance for the immediate needs of a patient not to exceed 48 hours.

(7) The controlled substance shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws and shall include the patient's name and address; the drug to be provided; the name, address, and telephone number of the physician; the name, address, and telephone number of the nurse midwife or physician assistant; and the date.

(8) This paragraph does not permit the physician or nurse midwife or physician assistant to operate a retail pharmacy as defined under the Texas Pharmacy Act Texas Occupations Code Annotated Subtitle J.

(9) This paragraph shall be construed to provide a physician the authority to delegate the act or acts of administering or providing controlled substances to a nurse midwife or physician assistant but not as requiring physician delegation of further acts to a nurse midwife or as requiring physician delegation of the administration of medications to registered nurses or physician assistants other than as provided in this paragraph.

(10) This subsection does not limit the authority of a physician to delegate the carrying out or signing of a prescription drug order involving a controlled substance under subsection (n) of this section.

(m) Liability. A physician shall not be liable for the act or acts of a physician assistant or advanced practice nurse solely on the basis of having signed an order, a standing medical order, a standing delegation order, or other order or protocols authorizing a physician assistant or advanced practice nurse to perform the act or acts of administering, providing, carrying out, or signing a prescription drug order unless the physician has reason to believe the physician assistant or advanced practice nurse lacked the competency to perform the act or acts.

(n) Prescription Drug Orders.

(1) Pursuant to the Medical Practice Act, Texas Occupations Code Annotated §157.0511, a physician's authority to delegate the carrying out or signing of a prescription drug order is limited to:

(A) dangerous drugs; and

(B) controlled substances to the extent provided in paragraph (2) of this subsection.

(2) A physician may delegate the carrying out or signing of a prescription drug order for a controlled substance only if:

(A) the prescription is for a controlled substance listed in Schedule III, IV, or V as established under Chapter 481 of the Texas Health and Safety Code;

(B) the prescription, including a refill of the prescription, is for a period not to exceed 90 days;

(C) with regard to the refill of a prescription, the refill is authorized after consultation with the delegating physician and the consultation is noted in the patient's chart; and

(D) with regard to a prescription for a child less than two years of age, the prescription is made after consultation with the delegating physician and the consultation is noted in the patient's chart.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2010.

TRD-201005301
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: October 3, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 305-7016

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.27

The General Land Office (GLO) adopts amendments to §15.27 (relating to Certification Status of Matagorda County Dune Protection and Beach Access) to amend the applicable beach user fee. The amendment is adopted without changes to the proposal as published in the June 18, 2010, issue of the *Texas Register* (35 TexReg 5181) and will be not be republished.

BACKGROUND AND REASONED JUSTIFICATION

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 - 15.21), a local government with jurisdiction over gulf beaches must submit its beach management plan and amendments to the plan to the GLO for certification, including a plan to impose or increase public beach access, parking, or use fees. The GLO is required to review such plans and certify by rule those plans that are consistent with the Open Beaches Act, the Dune Protection Act, and the Beach/Dune Rules. As provided in 31 TAC §15.8, local governments may request an increase in beach user fees provided that the local government demonstrates that there are additional costs to the local government for providing public services and facilities directly related to the public beach. Matagorda County has requested an approval of an increase in the beach user fee imposed in accordance with 31 TAC §15.8 and Texas Natural Resources Code §61.022(c). On January 25, 2010 the Matagorda County Commissioners Court passed a Resolution, which amended its dune protection and beach access plan to increase the beach user fee imposed by County pursuant to 31 TAC §15.8 from $6 per calendar year to $10 per calendar year. Based on the information provided by Matagorda County, the GLO has determined that the fee increase requested by this jurisdiction is reasonable in that it does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services, does not unfairly limit public use of and access to and from public beaches in any manner, and is consistent with §15.8 of the Beach/Dune Rules and the Open Beaches Act.

The public will benefit from the increase in the beach user fees imposed because the increased fees are necessary for

Matagorda to continue to fund and provide adequate and improved beach-related services to the public including: funding for ensuring safe use of and access to and from the public beach, including vehicular controls, management, and parking regulations; acquisition and maintenance of off-beach parking and access ways; sanitation and litter control, including providing and servicing trash receptacles; beach maintenance, including removal of debris and relocation of seaweed; law enforcement; beach/dune system education; beach/dune protection and restoration projects; providing public facilities such as portable restrooms, showers, and picnic areas; and permitting of recreational and refreshment vendors.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the adopted rulemaking implements legislative requirements in Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(e), which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law.

CONSISTENCY WITH CMP

The adopted amendments to §15.27 relating to Certification Status of Matagorda County Dune Protection and Beach Access Plan is subject to the Coastal Management Program (CMP) as provided in Texas Natural Resources Code §33.2053(a)(10) and 31 TAC §505.11(a)(1)(J), relating to the Actions and Rules Subject to the CMP, and must be consistent with the applicable CMP goals and policies under §501.26, relating to Policies Construction in the Beach/Dune System. The GLO has reviewed the adopted rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The amended action is consistent with the GLO Beach/Dune regulations that the Council has determined to be consistent with the CMP. Consequently, the GLO has determined that the adopted action is consistent with the applicable CMP goals and policies. The adopted amendments were distributed to Council members in order to provide them an opportunity to provide comment on the consistency of the adopted rulemaking during the comment period.

PUBLIC COMMENTS

The GLO did not receive any comments on the adopted amendment.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(e) which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 7, 2010.

TRD-201005201
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
Effective date: September 27, 2010
Proposal publication date: June 18, 2010
For further information, please call: (512) 475-1859

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.75

The Comptroller of Public Accounts adopts an amendment to §3.75, concerning refunds, payments under protest, payment instruments and dishonored payments, with changes to the proposed text as published in the April 2, 2010, issue of the *Texas Register* (35 TexReg 2723).

Subsection (a)(2) is amended to add the definition of a rental company.

Subsection (b) addresses refund procedure. Paragraph (2) clarifies that the comptroller may determine the eligibility and make eligible refund of error tax initially paid to a county tax assessor-collector. Paragraph (3) clarifies that the comptroller may determine the eligibility and make eligible refund of error tax initially paid to a dealer on other than a seller financed sale, and remitted through a county tax assessor-collector. New paragraph (5) is added to describe the procedure for obtaining a refund of motor vehicle rental tax paid in error. Non-substantive changes are made for clarity.

No comments were received regarding adoption of the amendment.

The comptroller's office has made the following change to the proposed rule. New subsection (b)(6) is added to address refunds made in connection with repurchases by manufacturers and distributors under Occupations Code, Chapter 2301 ("lemon law").

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amended section implements Tax Code, §152.003.

§3.75. Refunds, Payments Under Protest, Payment Instruments and Dishonored Payments.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Dealer--A motor vehicle seller licensed by the Texas Department of Transportation in accordance with Occupations Code, Chapter 2301, or Transportation Code, Chapter 503, to sell motor vehicles.

(2) Rental Company--A motor vehicle rental provider permitted under Tax Code, §152.065.

(3) Seller-Financed Sales--A retail sale of a motor vehicle by a dealer in which the seller collects all or part of the total consideration in periodic payments and retains a lien on the motor vehicle until all payments have been received.

(b) Refunds.

(1) Tax paid to state. Any person, or the person's attorney, assignee, or other successor may request from the comptroller a refund of any tax that the person directly paid and remitted to the state but that was not due.

(A) The refund request must be made within:

(i) four years from the date on which the tax was due and payable; or

(ii) six months after a determination for the periods for which the refund is claimed becomes final; or

(iii) six months after any determination would have become final had payment not been made before the due date.

(iv) a claim for refund of an amount paid pursuant to a deficiency determination is timely for all transactions included in the deficiency determination if made in accordance with clauses (ii) or (iii) of this subparagraph. A claim for refund for items not included in a deficiency determination must be made in accordance with clause (i) of this subparagraph.

(B) Before the expiration of the statute of limitations, the comptroller and a taxpayer may agree in writing to an extension of the statute of limitations.

(C) An extension applies only to the periods specifically mentioned in the agreement. Any assessment or refund request pertaining to periods for which limitations have been extended must be made prior to the expiration date of the agreement. Following expiration of the agreement, the statute of limitations applies to subsequent assessments and refund requests as if no extension had been authorized.

(D) The request for a refund must be made in writing and must state fully and in detail the specific grounds upon which the claim is founded. The request must also indicate the period for which the claimed overpayment was made. The claim must be submitted within the applicable limitation period as provided in subparagraph (A) of this paragraph, and must include supporting documentation.

(E) The comptroller may require a person to submit additional information to verify the refund claim. The person must show to the satisfaction of the comptroller that the refund is due and make available to the comptroller any documentation that the comptroller requires to process the refund.

(F) In determining the statute of limitations for filing a refund claim, the time during which an administrative proceeding is pending before the comptroller for the same period is not counted. A taxpayer may not file a claim for the same transaction and for the same time period as a refund claim previously denied.

(G) Failure to file a claim within the limitation prescribed by this section constitutes a waiver of any demand against the state on account of the overpayment.

(2) Tax paid to county tax assessor-collector. Tax paid to the county tax assessor-collector should be recovered in the same manner as prescribed in paragraph (1) of this subsection. The county tax assessor-collector by having remitted tax collected and submitting record of each transaction to the comptroller, authorizes the comptroller to accept refund requests directly from the claimant, to determine the eligibility of the refund and to make eligible refunds. The written refund request should include a copy of the receipt issued by the county tax assessor-collector for payment of taxes and the taxpayer's social security number, federal employers identification number, or comptroller assigned tax permit number.

(3) Tax paid to a dealer on sales other than seller-financed sales where the dealer is required to remit the tax to the county tax assessor-collector pursuant to Tax Code, §152.0411. Tax paid to dealer should be recovered in the same manner as prescribed in paragraph (1) of this subsection. The county tax assessor-collector by having accepted and remitted the tax collected, and submitting record of each transaction to the comptroller, authorizes the comptroller to accept refund requests directly from the claimant, to determine the eligibility of the refund and to make eligible refunds. The written refund request should include a copy of the receipt issued by the county tax assessor-collector for payment of taxes and the taxpayer's social security number, federal employers identification number, or comptroller assigned tax permit number.

(4) Tax paid to a dealer on seller-finance sales. A person who remits tax to a dealer may not request from the comptroller a refund of any tax that the person has remitted to a seller but contends was not due. The tax must be recovered from the seller.

(A) A written request for a refund must be directed to the dealer and must state the specific grounds upon which the claim is founded. The written request should be retained by the dealer to document the reason tax was refunded.

(B) After the dealer has refunded or, with the purchaser's written consent, credited the tax to the account of the purchaser, the dealer may then seek reimbursement from the state in accordance with the procedures outlined in paragraph (1) of this subsection, or take a credit on the dealer's next return in the amount refunded or credited to the account of the purchaser.

(5) Tax paid to a rental company. A person who remits tax to a rental company may not request from the comptroller a refund of any tax that the person has remitted to a rental company but contends was not due. The tax must be recovered from the rental company.

(A) A written request for a refund must be directed to the rental company and must state the specific grounds upon which the claim is founded. The written request should be retained by the rental company to document the reason tax was refunded.

(B) After the rental company has refunded or, with the purchaser's written consent, credited the tax to the account of the purchaser, the rental company may then seek reimbursement from the state in accordance with the procedures outlined in paragraph (1) of this subsection, or take a credit on the rental company's next return in the amount refunded or credited to the account of the purchaser.

(6) Tax refund made pursuant to Occupations Code, Chapter 2301 ("Lemon Law"). A manufacturer or distributor who repurchased a vehicle under Occupations Code, Chapter 2301 or similar terms, and who refunded tax to the purchaser may request a refund in the same manner as prescribed in paragraph (1) of this subsection.

(A) The refundable amount is limited to tax computed on the dollar amount refunded. A deduction will be made for any usage charges.

(B) If the tax was initially reduced by a deduction allowed under Tax Code, §152.002(b), any refund will be made on a similar proportional basis.

(C) The manufacturer or distributor must obtain an assignment from the purchaser.

(c) Payments under protest.

(1) Payment made to a county tax assessor-collector.

(A) If, pursuant to the authority of Tax Code, §112.051, motor vehicle sales and use taxes are paid under protest to a county tax assessor-collector, the protest payment to the tax assessor-collector must be accompanied by a written letter of protest that sets out in detail each and every ground or reason why the taxpayer contends that the assessment is unlawful or unauthorized. Immediately upon receipt of the protest payment and written protest, a copy of the protest letter must be sent to the comptroller by the tax assessor-collector together with a copy of the tax receipt showing that tax was paid. If the taxpayer fails to submit to the county tax assessor-collector the letter of protest at the time of payment, the tax should be remitted normally by the tax assessor-collector.

(B) The payment of taxes under protest to a county tax assessor-collector is limited to those taxes that the tax assessor-collector is authorized to receive.

(C) It is the duty of the county tax assessor-collector to transmit the full amount of all motor vehicle sales and use taxes paid under protest to the comptroller. The tax assessor-collector shall transmit these protest payments to the comptroller daily and the tax assessor-collector must inform the comptroller in writing that such taxes were paid under protest.

(2) Payment made to the comptroller. A written letter of protest that sets out fully and in detail each and every ground or reason why the taxpayer contends that the assessment is unlawful or unauthorized must accompany the payment. If the payment and letter of protest do not accompany one another, the payment will be deemed not to have been made under protest.

(d) Payment Instruments.

(1) The comptroller authorizes money orders, cash, cashier's checks, and certified checks as valid methods of payment of motor vehicle sales and use taxes to a county tax assessor-collector. If a county tax assessor-collector accepts personal checks as payment instruments, the county tax assessor-collector is relieved of liability only if the county tax assessor-collector requires at least the following identification:

(A) personal data including name, home address, home telephone number, name and location of employer, and telephone number of employer;

(B) driver's license number of the person signing the check; and

(C) license plate number of motor vehicle(s) owned by person signing the check.

(2) if a county tax assessor-collector accepts a personal check in payment of motor vehicle sales and use taxes, and the personal check is not honored, the county tax assessor-collector may request the assistance of the comptroller in collecting the monies due if, within the statute of limitations set forth in subsection (b)(1) of this section, the county tax assessor-collector certifies on a form promulgated by the comptroller:

(A) the identification information required by this section;

(B) two dates upon which the county tax assessor-collector sent the check to the appropriate bank;

(C) the date upon which the sheriff attempted to seize the license plates if the fees for the plates were included in the check; and

(D) the date(s) the county tax assessor-collector took other collection action, such as filing a complaint with the county attorney or hiring a collection agency.

(e) Voided Receipt Because of Dishonored Payment. A county tax assessor-collector has no authority to void a motor vehicle sales tax receipt and not report the tax payment when the check given in payment of the tax is returned unpaid.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2010.

TRD-201005257
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: September 30, 2010
Proposal publication date: April 2, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER D. APPRAISAL REVIEW BOARD

34 TAC §9.804

The Comptroller of Public Accounts adopts an amendment to §9.804, concerning arbitration of appraisal review board determinations, with changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6490). This section is being amended to implement provisions of House Bill 4412, effective September 1, 2009, and Senate Bill 771, effective January 1, 2010, both passed by the 81st Legislature, 2009. House Bill 4412 permits owners of certain contiguous land to pay a single arbitration deposit. Senate Bill 771 changes the appraisal review board orders that may be appealed through binding arbitration, creates a provision for expedited arbitration, includes additional licensed and certified individuals in the list of persons who may qualify to serve as arbitrators, provides new requirements regarding renewal of arbitrators' agreements to continue to be included in the registry of qualified arbitrators, and includes additional licensed individuals in the list of persons who

may represent parties to an arbitration proceeding. This section is also being amended to improve administrative efficiency.

The agency received written comments and the responses are as follows.

The agency received a written submission from an individual inquiring as to whether, as an arbitrator currently on the registry, she would need to submit another application to be included on the registry of arbitrators. The act of adopting the amendment does not invoke a reapplication requirement; continuation on the registry is governed by Tax Code, §41A.061 and related provisions contained in amended §9.804. The commenter also inquired as to whether "the 30 hour training" is no longer required "in order to be an Arbitrator." The training required for initial qualification of arbitrators under Tax Code, Chapter 41A is set forth in Tax Code, §41A.06 and is incorporated by reference in amended §9.804. The commenter did not request any specific change and no change was made in response.

The agency received a written submission from an individual regarding the wording of amended subsection (a)(2) insofar as it "appears to exempt an attorney (who represents an owner) from having 'a completed authorization form prescribed by the comptroller' before taking 'any action relating to binding arbitration'," but "would seem to require an attorney for the appraisal district, 'other than an (attorney) employee of the appraisal district,' to have written authorization from the chief appraiser." The commenter believes that "requiring an attorney to present demonstration of authority is an attempt to regulate the practice of law and, therefore, would violate constitutional separation of powers." The commenter concludes that, "(r)egardless of the constitutional import," attorneys should be exempted for attorneys of both property owners and chief appraisers or not be exempted for either. The agency, although not in complete agreement with the commenter's rationale, does agree with the commenter's suggested change that attorneys should be exempted from the written, agent authorization provision for both property owners and appraisal districts. The last sentence of subsection (a)(2) was revised accordingly.

The agency received a written submission from an individual questioning how the amendment affects him as an arbitrator. The provisions of §9.804, in conjunction with Tax Code, Chapter 41A and other applicable law, govern Tax Code, Chapter 41A arbitration proceedings. The commenter did not request any specific change and no change was made in response.

The agency received a written submission from an individual inquiring as to whether the arbitrator will "be able to include instructions for a timeline regarding rebuttal evidence." As noted by the commenter, the amendment specifically provides that "(t)he arbitrator may request that the parties produce and exchange evidence prior to the hearing." The commenter did not request any specific change regarding the issue and no change was made in response. The commenter also suggested that, due to a lack of understanding among property owners, appraisers, and arbitrators of "the difference between equity and market value," that "if equity was included in the list of definitions by the state where market value is defined maybe everyone in the arbitration process could be on the same page." The agency disagrees with the comment and no change was made. "Market value" is defined in §9.804 for purposes of construction and interpretation of the phrase as used in §9.804. Furthermore, the definition of "market value" in §9.804 merely imports the definition set forth in the Tax Code. The term "equity" is not included in §9.804 or Tax Code, Chapter 41A.

The agency received a written submission from an individual inquiring as to whether the deletion of the word "real" in subsection (b)(2) "interpret(s) to now include and allow personal property to be subject to binding arbitration." The word "real" in subsection (b)(2) was deleted to implement the legislative amendment that deleted the word "real" from the text of Tax Code, §41A.01 in Senate Bill 771, effective January 1, 2010, passed by the 81st Legislature, 2009, deleting the prior limitation that excluded personal property. The commenter did not request any specific change and no change was made in response.

The agency received a written submission from an individual stating that no longer requiring the exchange of evidence is "a poor idea." The commenter believes "the exchange of evidence and rebuttal important." The agency, although not in complete agreement with the commenter's rationale, does agree with the commenter's suggestion that the exchange of evidence should be required. The last sentence of subsection (e)(1) was revised accordingly.

The agency received a written submission from an individual inquiring as to whether the comptroller will provide the agent authorization form referenced in subsection (a)(2). Subsection (a)(2) confirms that the comptroller will prescribe the form. The commenter did not request any specific change regarding this issue and no change was made in response. The commenter also suggested that the rule should provide for substitution in cases of impartial treatment and conflict of interest. The agency disagrees with this comment and no change was made. The legislature provided in Tax Code, §41A.09 for appeal under Civil Practices and Remedies Code, §171.088, which provides for an arbitration award to be vacated if a party's rights were prejudiced by, among other things, evident partiality by an arbitrator appointed as a neutral arbitrator. The commenter also inquired as to whether a request by a property owner for a copy of the appraisal review board record should be treated as a public information request and a charge assessed. This subject is governed by law applicable to the specific facts of any such request and is beyond the scope of §9.804. The commenter did not request any specific change regarding this issue and no change was made in response. The commenter also asked if an in-person arbitration could be specified. As worded, only an arbitrator may require that the arbitration be conducted in person. The commenter did not request any specific change regarding this issue and no change was made in response. The commenter also asked if removal of the evidence and rebuttal deadlines means "that the evidence may not be produced until the day of the hearing" and noted that "there appears to be no rebuttal unless the arbitrator specifies in his written procedures." The commenter stated that "(w)ithout the evidence and rebuttal deadlines we are unable to determine if a settlement might be possible" and "(i)t would be helpful if the comptroller's office had a recommended form for format for the Arbitrators to use to give guidance, examples: for deadlines or dates." As stated above in response to another commenter's written submission, the agency does agree that the exchange of evidence should be required and the last sentence of subsection (e)(1) was revised accordingly. The agency disagrees with the suggestion that the comptroller provide a recommended form for arbitrators to use for deadlines or dates. Each arbitration is an independent proceeding conducted by individuals determined by the legislature to be qualified. The commenter also inquired as to whether the written authorization referenced in subsection (e)(3) must be on the comptroller's prescribed form referenced in subsection (a)(2). As stated in subsection (e)(3), a party may represent himself or may be represented by an agent

as provided by Tax Code, §41.08 with timely, written authorization as provided in §9.804. The agency agrees that clarification would be helpful and has revised subsection (e)(3) accordingly.

This amendment is adopted under Tax Code, §41A.13 which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 41A.

This amendment implements Tax Code, §§41A.01, 41A.03, 41A.031, 41A.04, 41A.05, 41A.06, 41A.061, 41A.07, 41A.08, and 41A.09.

§9.804. Arbitration of Appraisal Review Board Determinations.

(a) Definitions and instructions. In this section:

(1) "Owner" means a person or entity having legal title to property. It does not include lessees who have the right to protest property valuations before county appraisal review boards.

(2) "Agent" means an individual for whom written authorization has been granted in accordance with the terms of this subsection and includes the following: an attorney licensed by the State of Texas; a real estate broker or salesperson licensed under Occupations Code, Chapter 1101; a real estate appraiser licensed or certified under Occupations Code, Chapter 1103; an appraisal district employee registered under Occupations Code, Chapter 1151, or an appraisal district contractor; a property tax consultant registered under Occupations Code, Chapter 1152; or a certified public accountant certified under Occupations Code, Chapter 901. An agent, other than an attorney, may not take any action relating to binding arbitration on behalf of an owner without a completed authorization form prescribed by the comptroller. The authorization form must be signed by the owner and specify the actions that the agent is authorized to take on behalf of the owner with respect to binding arbitration. Authorized actions that must be identified on the form include whether or not the agent has the authority to sign the request for binding arbitration, whether or not the agent has the authority to receive deposit refunds, and whether or not the agent has the authority to represent the owner in the arbitration proceeding. The authorization must identify as an agent a specific individual and identify the agent's license or certificate number and applicable licensing board pertaining to the license or certificate under which the agent is qualified to represent the owner pursuant to Tax Code, §41A.08. An authorization identifying a business entity is not valid; identification of an individual meeting the qualifications of Tax Code, §41A.08 is required. If an owner authorizes an agent to receive deposit refunds, the authorization must include the agent's social security number, federal tax identification number, or Texas state tax identification number. If the owner has no agent, all correspondence from the comptroller regarding the arbitration will be sent to the owner. If the owner has authorized an agent to receive deposit refunds as provided in this section, all correspondence from the comptroller regarding the arbitration will be sent to the authorized agent. In order for an agent to represent an appraisal district, other than an attorney or an employee of the appraisal district, a written statement signed by the chief appraiser authorizing the agent to represent the district in the arbitration proceedings shall be submitted in writing to the property owner and the arbitrator at or before the time of the arbitration proceeding.

(3) "Binding arbitration" means a forum in which each party to a dispute presents the position of the party before an impartial third party who is appointed by the comptroller as provided by Tax Code, Chapter 41A, and who renders a specific award that is enforceable in law and may only be appealed as provided by Civil Practices and Remedies Code, §171.088, for purposes of vacating an award.

(4) "Appraised value" has the meaning included in Tax Code, §1.04(8).

(5) "Market value" has the meaning included in Tax Code, §1.04(7).

(6) "Appraisal district" has the meaning included in Tax Code, §6.01.

(7) "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

(b) Request for Arbitration.

(1) The appraisal review board of an appraisal district shall include a notice of the owner's right to binding arbitration and a copy of the request for binding arbitration form prescribed by the comptroller with the notice of issuance and the order determining a protest filed pursuant to Tax Code, §41.41(a)(1) concerning the appraised or market value of property if the value determined by the order is $1 million or less or if the property qualifies as the owner's residence homestead under Tax Code, §11.13.

(2) An owner may appeal through binding arbitration an appraisal review board order determining a protest filed pursuant to Tax Code, §41.41(a)(1) concerning the appraised or market value of property if the value determined by the order is $1 million or less or if the property qualifies as the owner's residence homestead under Tax Code, §11.13. A protest concerning unequal appraisal, a motion for correction of an appraisal roll, a protest concerning the qualification of property for exemption or special appraisal, or any other issue not specified in Tax Code, §41.41(a)(1) cannot be appealed through binding arbitration.

(3) A request for binding arbitration must be made on the form prescribed by the comptroller and signed by an owner or agent. If an agent files a request for binding arbitration, a written authorization signed by the owner as described in this section that specifically authorizes the agent to file the request must be attached to the request for binding arbitration. Failure to attach a complete authorization disqualifies the agent from requesting the arbitration. The request for binding arbitration form must be filed with the appraisal district responsible for appraising the property not later than the 45th calendar day after the date the owner receives the order determining protest from the appraisal review board as evidenced by certified mail receipt. A deposit in the applicable amount as provided by Tax Code, §41A.03 in the form of a money order or a check issued and guaranteed by a banking institution, such as a cashier's or teller's check, payable to the Comptroller of Public Accounts must accompany the request for binding arbitration. Personal check, cash, or other form of payment shall not be accepted. The request for binding arbitration with the applicable deposit and, if applicable, the agent authorization form must be timely submitted to the appraisal district by hand delivery or by certified first-class mail. Subject to all provisions set forth in this section, a property owner may request expedited arbitration as provided by Tax Code, §41A.031.

(4) The appraisal district shall reject a request for binding arbitration if the owner or agent fails to attach the required deposit in the manner required by this section. In such event, the appraisal district shall return the request for binding arbitration with a notification of the rejection to the owner or agent by regular first-class mail or other form of delivery requested in writing by the owner or agent.

(5) The chief appraiser of the appraisal district must submit requests for binding arbitration with the required deposits to the comptroller not later than the 10th calendar day after the date the appraisal district receives the requests. The chief appraiser must assign an arbitration number to each request in accordance with the procedures and forms developed by the comptroller. The chief appraiser must certify receipt of the request and state in the certification whether or not the request was timely filed; the request was made on the form prescribed

by the comptroller; the deposit was submitted according to this section; and any other information required by the comptroller. In addition, the chief appraiser must submit to the comptroller with each request a copy of the order determining protest or, in the case of an appeal relating to contiguous properties pursuant to Tax Code, §41A.03, a copy of each order determining protest. The chief appraiser must submit the requests for arbitration to the comptroller by hand delivery or certified first-class mail, and must simultaneously deliver a copy of the submission to the owner by regular first-class mail.

(6) Failure by the owner to timely file the request for arbitration and the applicable deposit with the appraisal district shall result in the denial of the request by the comptroller. Failure by the owner to pay taxes on the property subject to the appeal in an amount equal to the amount of taxes due on the portion of the taxable value of the property that is not in dispute before the delinquency date shall result in the denial of the request for arbitration by the comptroller. If the property owner or agent did not file a protest pursuant to Tax Code, §41.41(a)(1) concerning the appraised or market value of property determined by the appraisal review board to be valued at $1 million or less or property that qualifies as the owner's residence homestead under Tax Code, §11.13, the comptroller shall deny the request for binding arbitration. If the property owner or agent filed an appeal in district court concerning the property subject to a request for binding arbitration, the comptroller shall deny the request. Failure by the owner to provide all information required by the comptroller's prescribed form, including but not limited to the signature of the owner or agent and the written authorization of the owner designating an agent, may result in the denial of the request by the comptroller if the information is not provided in a timely manner, not to exceed 10 calendar days, after a written or verbal request by the comptroller to the person requesting arbitration to supplement or complete the form has been made.

(7) On receipt of the request for arbitration, the comptroller shall determine whether to accept the request, deny the request, or request additional information. The comptroller shall notify the owner or agent and appraisal district of the determination. If the comptroller accepts the request, the comptroller shall notify the owner or agent and the appraisal district of the Internet address of the comptroller's website at which the comptroller's registry of arbitrators is maintained and may be accessed. The comptroller shall request in the notice that the parties attempt to select an arbitrator from the registry of arbitrators. The notice shall be delivered electronically, by facsimile transmission, or by regular first-class mail. If requested by the owner or appraisal district, the comptroller shall deliver promptly a copy of the registry of arbitrators in paper form to the owner or the appraisal district by regular first-class mail.

(c) Registry of Arbitrators.

(1) A person seeking to be listed in the comptroller's registry of arbitrators must submit a completed application on a form provided by the comptroller providing all requested information and documentation and affirming that the applicant meets the qualifications set forth in Tax Code, §41A.06. By submitting the application and any documentation required on the prescribed form, the applicant attests that he or she has all of the qualifications required under Tax Code, §41A.06, agrees to conduct an arbitration for a fee that is not more than 90% of the amount of the applicable arbitration deposit, and agrees to promptly notify the comptroller of any change in the applicant's qualifications. The attestation shall remain in effect until the renewal date of the applicant's license or certification under which the applicant was qualified, pursuant to Tax Code, §41A.06, to be included in the registry. For an arbitrator to continue to be included in the registry, a new application must be submitted on or before the earlier of each renewal date of the applicant's license or certification under which the applicant was qualified, pursuant to Tax Code, §41A.06, or the second anniversary of the date the arbitrator was initially added to or subsequently renewed on the registry.

(2) A person applying for inclusion in the comptroller's registry of arbitrators must agree to conduct arbitration hearings as required by Tax Code, Chapter 41A, and in accordance with the limitations indicated in the application and by this section. The application must state that false statements provided by applicants may result in misdemeanor or felony convictions. The application must also state that the comptroller may remove a person from the registry of arbitrators at any time due to failure to meet statutory qualifications or to comply with requirements of this section, or for good cause as determined by the comptroller.

(3) The comptroller shall deny an application if it is determined that the applicant does not qualify for listing in the arbitration registry or if inclusion of the applicant in the arbitration registry would otherwise not be in the interest of impartial arbitration proceedings. A person is ineligible to be listed as an arbitrator if the person is a member of a board of directors of any appraisal district or an appraisal review board in the state; an employee, contractor, or officer of any appraisal district in the state; a current employee of the comptroller; or a member of a governing body, officer, or employee of any taxing unit in the state.

(4) If the application is approved, the applicant's name and other pertinent information provided in the application and the applicant's professional resume or vitae shall be added to the comptroller's registry of arbitrators. The registry may include the arbitrator's experience and qualifications, the geographic areas in which the arbitrator agrees to serve, and other information useful for property owners and county appraisal district personnel in selecting an arbitrator. The arbitrator may be required to conduct arbitrations regionally in order to be included in the registry.

(5) The comptroller must notify the applicant of the approval or denial of the application or the removal of the arbitrator from the registry as soon as practicable and must provide a brief explanation of the reasons for denial. The applicant may provide a written statement of why the denial should be reconsidered by the comptroller within 30 calendar days of the applicant receiving the denial. The comptroller may approve the application if the applicant provides information to justify the approval. If the application is subsequently approved, the comptroller shall notify the applicant as soon as practicable.

(6) Each person who is listed as an arbitrator in the comptroller's registry must report to the comptroller in writing any material change in the information provided in the application within 30 calendar days of the change. A material change includes, but is not limited to a change in address, telephone number, e-mail address, website, loss of required licensure, incapacity, or other condition that would prevent the person from professionally performing arbitration duties. Failure of the arbitrator to report a material change may result in the immediate removal of the arbitrator from the current registry upon its discovery and the denial of future applications for inclusion in the registry. An arbitrator's failure to report a material change as required by this paragraph shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in the registry.

(7) Owners, agents, and appraisal districts are responsible for verifying the accuracy of the information provided in the arbitrator registry in attempting to agree on an arbitrator. If the information is found to be inaccurate by the owners, agents, or appraisal districts, such fact must be communicated to the comptroller as soon as practicable in order that the registry may be corrected. Inclusion of an arbitrator in the comptroller's registry is not and shall not be construed as a representation by the comptroller that all information provided is true and correct

and shall not be construed or represented as a professional endorsement of the arbitrator's qualifications to conduct arbitration proceedings.

(8) The registry shall be maintained on the comptroller's Internet website or in non-electronic form and will be updated within 30 calendar days of the date that arbitrator applications are approved or updated and processed by the comptroller.

(d) Appointment of Arbitrators.

(1) The appraisal district shall notify the comptroller not later than the 20th calendar day after the date the parties receive a copy of the registry or the notice of the comptroller's Internet address of the registry website, whichever is later, that an arbitrator was selected by the parties by agreement or that an agreement could not be reached.

(2) The comptroller shall promptly appoint an arbitrator selected by agreement of the owner or agent and the appraisal district. The notification of the appointment must be transmitted by regular first-class mail to the arbitrator. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(3) If an appraisal district notifies the comptroller that the owner or agent and the appraisal district have been unable to agree to an arbitrator, the comptroller shall appoint an arbitrator from the registry within 20 business days from such notification and inform the arbitrator by regular first-class mail. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(4) If the appraisal district fails to notify the comptroller of the selection of an arbitrator or the failure to agree to an arbitrator timely, the comptroller shall appoint an arbitrator from the registry within 20 business days of the date the comptroller becomes aware of the failure of the appraisal district and owner or agent to comply with the requirements of law. The arbitrator shall be notified of the appointment by the comptroller by regular first-class mail. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(5) The appointment of an arbitrator by the comptroller shall be made according to preferences included in arbitrator applications geographically and by random selection.

(6) An arbitrator may not accept an appointment and may not continue an arbitration after appointment if the arbitrator has an interest in the outcome of the arbitration or if the arbitrator is related to the owner, an officer, employee, or contractor of the appraisal district, or a member of the appraisal district board of directors or appraisal review board by affinity within the second degree or by consanguinity within the third degree as determined under Government Code, Chapter 573. The owner or appraisal district may request a substitute arbitrator before the arbitration proceedings begin upon a showing, supported by competent evidence, that the assigned arbitrator has an interest in the outcome of the arbitration or that the arbitrator is related to the owner, an officer, employee, or contractor of the appraisal district, or a member of the appraisal district board of directors or appraisal review board by affinity within the second degree or by consanguinity within the third degree as determined under Government Code, Chapter 573.

(7) The comptroller must be notified, in writing, within 5 business days of the arbitrator's receipt of the appointment that the arbitrator is unable or unwilling to conduct the arbitration because of a conflict of interest described by paragraph (6) of this subsection, or for any other reason; or that the appointment is accepted. The notification must be delivered to the comptroller electronically, by facsimile transmission, or by regular first-class mail. If the comptroller does not receive from the arbitrator written notification of acceptance or refusal of the appointment within 5 business days, the comptroller shall presume that the appointment has been refused. If the arbitrator refuses the appointment, the comptroller shall appoint a substitute arbitrator from the registry within 10 business days of the receipt, or the determination pursuant to this subsection, of the arbitrator's refusal. The process of appointment of arbitrators pursuant to this subsection shall continue in this fashion until an acceptance is obtained. A refusal to accept an arbitration appointment may be considered by the comptroller in evaluating subsequent requests for arbitration and appointments.

(e) Provision of Arbitration Services.

(1) The arbitrator may require written agreements with the appraisal district and the owner concerning provision of arbitration services, including but not limited to the time, place, and manner of conducting and concluding the arbitration. Unless the property owner and the appraisal district both agree to arbitration by submission of written documents, the arbitration will be conducted in person or by teleconference. An arbitrator may require that the arbitration be conducted in person. If the arbitration is conducted in person, the proceeding must be held in the county where the appraisal district office is located and from which the appraisal review board order determining protest was issued, unless the parties agree to another location. The arbitrator must give notice and conduct arbitration proceedings in the manner provided by Civil Practice and Remedies Code, §§171.044, 171.045, 171.046, 171.047, 171.049, 171.050, and 171.051, and shall continue a proceeding if both parties agree to the continuance and may continue a proceeding for reasonable cause. The arbitrator must, by written procedures delivered in advance to the parties, require that the parties produce and exchange evidence prior to the hearing.

(2) The arbitrator shall decide to what extent the arbitration hearing procedures are formal or informal and shall deliver written procedures to be used at the hearing. The parties shall be allowed to record the proceedings by audiotape, but may record them by videotape only with the consent of the arbitrator.

(3) The parties to an arbitration proceeding may represent themselves or may be represented by an agent as provided by Tax Code, §41A.08 with timely, written authorization as provided in this section. If an agent was not identified in the request for binding arbitration for purposes of representing an owner in the arbitration proceeding, a written authorization from the owner may be presented at the time of the arbitration proceeding in order for the agent to represent the owner at the proceeding. Such written authorization must be made on the comptroller-prescribed agent authorization form, must be signed by the owner, and may provide only for the agent to represent the owner at the arbitration proceeding. Any deposit refund will be processed in accordance with the original request for binding arbitration. No written authorization is required for an attorney to represent a party at an arbitration proceeding.

(4) The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to information provided to arbitrators. The information may not be disclosed except as provided by law.

(5) The arbitrator shall not communicate with the owner, the appraisal district, or their agents, nor shall the owner, the appraisal district, or their agents communicate with the arbitrator, prior to the arbitration hearing concerning specific evidence, argument, facts, merits, or the property subject to arbitration. Such communications may be grounds for the removal of the arbitrator from the comptroller's registry of arbitrators.

(6) The arbitrator shall dismiss a pending arbitration action with prejudice if it is determined during the proceedings that taxes on the property subject to the appeal are delinquent; that the appraisal review board order(s) appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1) concerning the appraised or market value

of property determined by the order at $1 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13; that the request for arbitration was not timely filed; or if the owner files an appeal with the district court under Tax Code, Chapter 42, concerning the value of property at issue in the pending arbitration. When the arbitration involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), each appraisal review board order appealed must be a determination of a protest filed pursuant to Tax Code, §41.41(a)(1) concerning the appraised or market value of property determined by the order at $1 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13; however, the combined total value of all orders appealed may exceed $1 million, whether or not the appeal involves a property that qualifies as owner's residence homestead. When the arbitration involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), the arbitrator shall dismiss a pending arbitration action with prejudice if it is determined during the proceedings that taxes on any property subject to the appeal are delinquent; that any of the appraisal review board orders appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1) concerning the appraised or market value of property determined by the order at $1 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13; that the request for arbitration was not timely filed; or if the owner files an appeal with the district court under Tax Code, Chapter 42, concerning the value of any property at issue in the pending arbitration.

(7) The arbitrator must complete an arbitration proceeding in a timely manner and will make every effort to complete the proceeding within 120 days from the acceptance of the appointment by the arbitrator. Failure to comply with the timely completion of arbitration proceedings may result in the removal of the arbitrator from the comptroller's registry of arbitrators.

(f) Arbitration Determinations and Awards.

(1) The arbitrator shall determine the appraised or market value of the property that is the subject of the arbitration and may only include in the award the remedy provided by Tax Code, §42.25.

(2) If the arbitrator makes a determination of the appraised value of property to be valued under Tax Code, Chapter 23, Subchapters B, C, D, E, or H, these statutory provisions and the comptroller's rules must be followed in making the appraised value determination.

(3) If the arbitrator makes a determination of the value of a residence homestead that has an appraised value that is less than its market value due to the appraised value limitation required by Tax Code, §23.23, the appraised value may not be changed unless:

(A) the arbitrator determines that the formula for calculating the appraised value of the property under Tax Code, §23.23, was incorrectly applied and the change correctly applies the formula;

(B) the calculation of the appraised value of the property reflected in the appraisal review board order includes an amount attributable to new improvements and the change reflects the arbitrator's determination of the value contributed by the new improvements; or

(C) the arbitrator determines that the market value of the property is less than the appraised value indicated on the appraisal review board order and the change reduces the appraised value to the market value determined by the arbitrator.

(4) Within 20 calendar days of the conclusion of the arbitration hearing, the arbitrator shall make a final determination and award on the form prescribed by the comptroller and signed by the arbitrator. A copy of the determination and award form shall be delivered to the owner or agent and the appraisal district by facsimile transmission or regular first-class mail, as requested by the parties, and to the comptroller by regular first-class mail.

(5) All post-appeal administrative procedures provided by Tax Code, Chapter 42, Subchapter C, shall apply to arbitration awards.

(g) Payment of Arbitrators' Fees and Refund of Property Owner Deposit.

(1) Deposits submitted with requests for arbitration by owners or agents, and submitted by appraisal districts to the comptroller, shall be deposited into individual accounts for each owner and according to assigned arbitration numbers.

(2) The provisions of Government Code, Chapter 2251, shall apply to the payment of arbitrator fees by the comptroller, if applicable, beginning on the date that the comptroller receives a copy of the arbitrator's determination and award by regular first-class mail.

(3) Payment of arbitrators' fees and arbitration deposit refunds will be processed in accordance with the provisions of Tax Code, §41A.09. An award that determines an appraised or market value at an amount exactly one-half of the difference in value between the property owner's opinion of value as stated in the request for binding arbitration and the value determined by the appraisal review board is deemed to be nearer the appraisal review board's determination of value. The comptroller will retain 10% of each deposit for administrative costs.

(4) If an arbitrator dismisses a pending arbitration as provided by subsection (e)(6) of this section, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs. In such event, the arbitrator must seek payment from the owner or agent for the services rendered prior to the dismissal of the proceeding.

(5) An owner or agent may withdraw a request for arbitration only by written notice delivered to the appraisal district, the comptroller, and the arbitrator, if one has been appointed. If the owner or agent withdraws a request for arbitration in writing 14 or more calendar days before the arbitration proceeding is first scheduled, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs. If the owner or agent withdraws a request for arbitration less than 14 calendar days before the arbitration proceeding is first scheduled, the comptroller shall pay the fee, if any, charged by the arbitrator. The fee will be paid from the owner's deposit and mailed to the address shown on the arbitrator's registry application. If the arbitrator's fee is less than 90% of the owner's deposit, the comptroller shall refund to the owner or agent any remaining deposit, less 10% retained by the comptroller for administrative costs. If the arbitrator's fee is 90% of the owner's deposit, the comptroller shall retain 10% of the deposit for administrative costs and no refund will be paid.

(6) If the comptroller denies a request for arbitration as provided by subsection (b)(6) of this section, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs.

(7) A refund to an owner or agent or a payment to an arbitrator is subject to the provisions of Government Code, §403.055. The comptroller's form for request for binding arbitration will require identification of the social security number or tax identification number of the individual authorized to receive deposit refunds. For an owner, the owner is required to provide the owner's social security number, federal tax identification number, or Texas state tax identification number. If an agent has been authorized by the owner to receive deposit refunds, the agent is required to provide the agent's social security number, federal tax identification number, or Texas state tax identification number. Deposit refunds will not be processed without the required identifica-

tion. The comptroller shall not issue a warrant for payment to a person who is indebted to the state or has a tax delinquency owing to the state until the indebtedness or delinquency has been fully satisfied.

(h) Pending Arbitrations. No party to an arbitration including, but not limited to, a property owner, a property owner's agent, an appraisal district, or an arbitrator, may seek the comptroller's advice or direction on a matter relating to a pending arbitration under Tax Code, Chapter 41A. An arbitration is pending from the date a request for arbitration is filed and continues until delivery of the arbitrator's final award pursuant to Tax Code, §41A.09. The prohibition in this subsection shall not apply to administrative matters assigned to the comptroller, such as processing of arbitration requests and deposits.

(i) Forms Adopted by Reference. The Comptroller of Public Accounts adopts by reference the Request for Binding Arbitration form and the Arbitration Determination and Award form. Copies of these forms can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

(j) Other Forms. All other comptroller forms applicable to this section may be revised at the discretion of the comptroller. The comptroller may also prescribe additional forms for the administration of binding arbitration. Current forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 9, 2010.

TRD-201005251
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: September 29, 2010
Proposal publication date: July 23, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3004

The Comptroller of Public Accounts adopts an amendment to §9.3004, concerning appraisal records of all property, without changes to the proposed text as published in the July 30, 2010, issue of the *Texas Register* (35 TexReg 6632). This section is being amended to update the record requirements regarding land appraised as provided by Tax Code, Chapter 23, Subchapter H and to update the statutory reference regarding the definition of a manufactured home.

No comments were received regarding adoption of the amendment.

This amendment is adopted pursuant to Tax Code, §25.02.

This amendment implements Tax Code, §25.02.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2010.

TRD-201005258
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: September 30, 2010
Proposal publication date: July 30, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §9.3034

The Comptroller of Public Accounts adopts an amendment to §9.3034, concerning notice of exemption application requirement, without changes to the proposed text as published in the July 30, 2010, issue of the *Texas Register* (35 TexReg 6633). This section is being amended to conform to the statutory provisions regarding exemptions requiring annual applications. The amendment is a result of a rule review of Texas Administrative Code, Title 34, Part 1, Chapter 9, Subchapter H, conducted by the comptroller. The rule review was performed pursuant to Government Code, §2001.039 and resulted in a determination that the reasons for initially adopting §9.3034 continue to exist.

No comments were received regarding adoption of the amendment.

This amendment is adopted pursuant to Government Code, §2001.039(c), which authorizes the readoption of a rule with amendments upon agency assessment, in conducting a rule review, of whether the reasons for initially adopting the rule continue to exist.

This amendment implements Tax Code, §11.44.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2010.

TRD-201005259
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: September 30, 2010
Proposal publication date: July 30, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 251. GENERAL

37 TAC §251.6

The Commission on Jail Standards adopts an amendment to §251.6, regarding complaints received by the agency, without

changes to the proposed text as published in the April 2, 2010, issue of the *Texas Register* (35 TexReg 2737).

This amendment is being adopted to comply with changes recommended by the Sunset Commission and enacted by the 81st Legislature.

This rule provides information and the procedure for filing complaints with the agency.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2010.

TRD-201005261
Brandon S. Wood
Assistant Director
Texas Commission on Jail Standards
Effective date: September 30, 2010
Proposal publication date: April 2, 2010
For further information, please call: (512) 463-8236

♦ ♦ ♦

CHAPTER 299. VARIANCE PROCEDURE RULES

37 TAC §299.3

The Commission on Jail Standards adopts an amendment to §299.3, concerning the contents of an application for variance, without changes to the proposed text as published in the April 2, 2010, issue of the *Texas Register* (35 TexReg 2737).

This amendment is being adopted to clarify the required information when submitting an application for variance.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2010.

TRD-201005262
Brandon S. Wood
Assistant Director
Texas Commission on Jail Standards
Effective date: September 30, 2010
Proposal publication date: April 2, 2010
For further information, please call: (512) 463-8236

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas Veterans Commission

Title 40, Part 15

TRD-201005265
Filed: September 10, 2010

♦ ♦ ♦

Proposed Rule Reviews

Texas Veterans Commission

Title 40, Part 15

The Texas Veterans Commission (Commission) will review and consider whether to re-adopt, re-adopt with amendments, or repeal Texas Administrative Code, Title 40, Part 15, Chapter 450, relating to Veterans County Service Officers Certificate of Training. This rule review will be conducted pursuant to Texas Government Code, §2001.039.

The Commission will assess whether the reason(s) for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Tina Carnes, General Counsel, Texas Veterans Commission, 1700 North Congress Avenue, Austin, Texas 78701 or by fax to (512) 463-3288. Comments may also be submitted electronically to *tina.carnes@tvc.state.tx.us.* For comments submitted electronically, please include "Rule Review" in the subject line. Any proposed changes to the sections of this chapter as a result of the review will be published in the "Proposed Rules" section of a subsequent issue of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201005284
Tina Carnes
General Counsel
Texas Veterans Commission
Filed: September 13, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) will review and consider whether to re-adopt, re-adopt with amendments, or repeal Texas Administrative Code, Title 40, Part 15, Chapter 451, relating to Veterans County Service Officers Accreditation. This rule review will be conducted pursuant to Texas Government Code, §2001.039.

The Commission will assess whether the reason(s) for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Tina Carnes, General Counsel, Texas Veterans Commission, 1700 North Congress Avenue, Austin, Texas 78701 or by fax to (512) 463-3288. Comments may also be submitted electronically to *tina.carnes@tvc.state.tx.us.* For comments submitted electronically, please include "Rule Review" in the subject line. Any proposed changes to the sections of this chapter as a result of the review will be published in the "Proposed Rules" section of a subsequent issue of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201005285
Tina Carnes
General Counsel
Texas Veterans Commission
Filed: September 13, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) will review and consider whether to re-adopt, re-adopt with amendments, or repeal Texas Administrative Code, Title 40, Part 15, Chapter 452, relating to Administration General Provisions. This rule review will be conducted pursuant to Texas Government Code, §2001.039.

The Commission will assess whether the reason(s) for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Tina Carnes, General Counsel, Texas Veterans Commission, 1700 North Congress Avenue, Austin, Texas 78701 or by fax to

(512) 463-3288. Comments may also be submitted electronically to *tina.carnes@tvc.state.tx.us*. For comments submitted electronically, please include "Rule Review" in the subject line. Any proposed changes to the sections of this chapter as a result of the review will be published in the "Proposed Rules" section of a subsequent issue of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201005286
Tina Carnes
General Counsel
Texas Veterans Commission
Filed: September 13, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) will review and consider whether to re-adopt, re-adopt with amendments, or repeal Texas Administrative Code, Title 40, Part 15, Chapter 453, relating to Historically Underutilized Business Program. This rule review will be conducted pursuant to Texas Government Code, §2001.039.

The Commission will assess whether the reason(s) for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Tina Carnes, General Counsel, Texas Veterans Commission, 1700 North Congress Avenue, Austin, Texas 78701 or by fax to (512) 463-3288. Comments may also be submitted electronically to *tina.carnes@tvc.state.tx.us*. For comments submitted electronically, please include "Rule Review" in the subject line. Any proposed changes to the sections of this chapter as a result of the review will be published in the "Proposed Rules" section of a subsequent issue of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201005287
Tina Carnes
General Counsel
Texas Veterans Commission
Filed: September 13, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) will review and consider whether to re-adopt, re-adopt with amendments, or repeal Texas Administrative Code, Title 40, Part 15, Chapter 454, relating to Grants. This rule review will be conducted pursuant to Texas Government Code, §2001.039.

The Commission will assess whether the reason(s) for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Tina Carnes, General Counsel, Texas Veterans Commission, 1700 North Congress Avenue, Austin, Texas 78701 or by fax to (512) 463-3288. Comments may also be submitted electronically to *tina.carnes@tvc.state.tx.us*. For comments submitted electronically, please include "Rule Review" in the subject line. Any proposed changes to the sections of this chapter as a result of the review will be published in the "Proposed Rules" section of a subsequent issue of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201005290
Tina Carnes
General Counsel
Texas Veterans Commission
Filed: September 13, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) will review and consider whether to re-adopt, re-adopt with amendments, or repeal Texas Administrative Code, Title 40, Part 15, Chapter 455, relating to TAPS Program. This rule review will be conducted pursuant to Texas Government Code, §2001.039.

The Commission will assess whether the reason(s) for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Tina Carnes, General Counsel, Texas Veterans Commission, 1700 North Congress Avenue, Austin, Texas 78701 or by fax to (512) 463-3288. Comments may also be submitted electronically to *tina.carnes@tvc.state.tx.us*. For comments submitted electronically, please include "Rule Review" in the subject line. Any proposed changes to the sections of this chapter as a result of the review will be published in the "Proposed Rules" section of a subsequent issue of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201005291
Tina Carnes
General Counsel
Texas Veterans Commission
Filed: September 13, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) will review and consider whether to re-adopt, re-adopt with amendments, or repeal Texas Administrative Code, Title 40, Part 15, Chapter 456, relating to Contract Negotiation and Mediation. This rule review will be conducted pursuant to Texas Government Code, §2001.039.

The Commission will assess whether the reason(s) for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Tina Carnes, General Counsel, Texas Veterans Commission, 1700 North Congress Avenue, Austin, Texas 78701 or by fax to (512) 463-3288. Comments may also be submitted electronically to *tina.carnes@tvc.state.tx.us.* For comments submitted electronically, please include "Rule Review" in the subject line. Any proposed changes to the sections of this chapter as a result of the review will be published in the "Proposed Rules" section of a subsequent issue of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201005292
Tina Carnes
General Counsel
Texas Veterans Commission
Filed: September 13, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) will review and consider whether to re-adopt, re-adopt with amendments, or repeal Texas Administrative Code, Title 40, Part 15, Chapter 457, relating to Protests of Agency Purchases. This rule review will be conducted pursuant to Texas Government Code, §2001.039.

The Commission will assess whether the reason(s) for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Tina Carnes, General Counsel, Texas Veterans Commission, 1700 North Congress Avenue, Austin, Texas 78701 or by fax to (512) 463-3288. Comments may also be submitted electronically to *tina.carnes@tvc.state.tx.us.* For comments submitted electronically, please include "Rule Review" in the subject line. Any proposed changes to the sections of this chapter as a result of the review will be published in the "Proposed Rules" section of a subsequent issue of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201005293
Tina Carnes
General Counsel
Texas Veterans Commission
Filed: September 13, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) will review and consider whether to re-adopt, re-adopt with amendments, or repeal Texas Administrative Code, Title 40, Part 15, Chapter 458, relating to Statutory Advisory Committees. This rule review will be conducted pursuant to Texas Government Code, §2001.039.

The Commission will assess whether the reason(s) for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Tina Carnes, General Counsel, Texas Veterans Commission, 1700 North Congress Avenue, Austin, Texas 78701 or by fax to (512) 463-3288. Comments may also be submitted electronically to *tina.carnes@tvc.state.tx.us.* For comments submitted electronically, please include "Rule Review" in the subject line. Any proposed changes to the sections of this chapter as a result of the review will be published in the "Proposed Rules" section of a subsequent issue of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201005294
Tina Carnes
General Counsel
Texas Veterans Commission
Filed: September 13, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) will review and consider whether to re-adopt, re-adopt with amendments, or repeal Texas Administrative Code, Title 40, Part 15, Chapter 459, relating to Transportation Support Services. This rule review will be conducted pursuant to Texas Government Code, §2001.039.

The Commission will assess whether the reason(s) for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Tina Carnes, General Counsel, Texas Veterans Commission, 1700 North Congress Avenue, Austin, Texas 78701 or by fax to (512) 463-3288. Comments may also be submitted electronically to *tina.carnes@tvc.state.tx.us.* For comments submitted electronically, please include "Rule Review" in the subject line. Any proposed changes to the sections of this chapter as a result of the review will be published in the "Proposed Rules" section of a subsequent issue of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201005295
Tina Carnes
General Counsel
Texas Veterans Commission
Filed: September 13, 2010

♦ ♦ ♦

Adopted Rule Reviews

School Land Board

Title 31, Part 4

Following the publication of the notice of intent to review in the June 11, 2010, issue of the *Texas Register* (35 TexReg 5082), the School Land Board (SLB) has reviewed and considered for readoption, revi-

sion, or repeal, all sections of Chapter 151, Operations of the School Land Board of Title 31, Part 4 of the Texas Administrative Code.

The SLB considered, among other things, whether the reasons for adoption of these rules continue to exist. During its review, the SLB determined that the agency rulemaking authority remains in effect and the necessity of these rules continues to exist. The SLB intends to *readopt with amendments* Texas Administrative Code, Title 31, Part 4, Chapter 151. Revisions to these rules are necessary to update agency references and definitions, to ensure consistency with governing statutes and clarify current practices, to correct typographical errors, and to delete language that provides no additional guidance or direction than that reflected in the governing statutes.

The proposed amendments will be published in a future issue of the *Texas Register* and will be subject to a 30-day comment period prior to final adoption.

No comments were received on the proposed rule review.

This completes the SLB's review of Chapter 151, Operations of the School Land Board.

TRD-201005203
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
School Land Board
Filed: September 7, 2010

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §49.3

Program Calendar. All documentation noted below must be submitted to the Department offices located at 221 E. 11th Street, Austin, 78701, by 5:00 pm (CST) by the date indicated.

Due Date	Documentation Required
12/20/2010	Pre-application Acceptance Period Begins.
12/20/2010	Pre-application Neighborhood Organization Request Date (Competitive HTC Only).
12/31/2010	Pre-application Response to Neighborhood Organization Request Date (Competitive HTC Only).
01/07/2011	Pre-Application Final Delivery Date (Submitted via CD-R; Competitive HTC Only).
01/21/2011	Full Application Neighborhood Organization Request Date (Competitive HTC Only). For Tax-Exempt Bond, Rural Rescue, HOME or HTF Applications the request must be sent no later than fourteen (14) days prior to the submission of the Threshold Documentation.
02/15/2011	Experience Certification Delivery Date (For Tax-Exempt Bond Applications the Experience Certification Documentation must be submitted with the Application).
02/22/2011	Full Application Response to Neighborhood Organization Request Date (Competitive HTC Only). For Tax-Exempt Bond, HOME or HTF Applications the response should be received no later than seven (7) days prior to the Application submission.
03/01/2011	Full Application Delivery Date (Submitted via CD-R; Competitive HTC Only).
03/01/2011	Quantifiable Community Participation (QCP) Delivery Date (Competitive HTC Only).
03/01/2011	Unit of General Local Government Resolutions for Applications applying for TDHCA HOME funds and selecting §49.9(a)(5) points (must be submitted with Application).
03/01/2011	Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal, and Market Study). For Tax-Exempt Bond Developments the Third Party Reports must be submitted no later than 60 days prior to the Board meeting at which the tax credits will be considered. The 60 day deadlines are available on the Department's website.
03/02/2011	Rural Rescue Application Submission Period (Ends 11/15/2011).
04/01/2011	Input from State Senator or Representative Delivery Date (Competitive HTC Only).
04/01/2011	Resolutions Delivery Date (One Mile Three Year Rule, 2x Per Capita, resolutions in connection with Selection Criteria, etc.) For Tax-Exempt Bond Developments all resolutions are due no later than 14 days prior to the Board meeting at which the tax credits will be considered).

Due Date	Documentation Required
Mid-May	Final Scoring Notices Issued (Competitive HTC Only).
06/01/2011	Withdraw Deadline for State Senator or Representative Letters (Competitive HTC Only).
06/15/2011	Application Challenges Deadline (Competitive HTC Only).
Late June	Release of Eligible Applications for Consideration for Award in July (Competitive HTC Only).
Late July	Final Awards (Competitive HTC Only).
Mid-August	Commitments are Issued (Competitive HTC Only).
11/01/2011	Carryover Documentation Delivery Date.
07/01/2012	10% Test Documentation Delivery Date.
07/01/2012	Documentation of Commencement of Substantial Construction Delivery Date.
12/31/2013	Placement in Service Deadline.
Sixty (60) days prior to Board meeting	Amendment Requests.
Fifteen (15) business days prior to Board meeting.	Extension Requests.

Figure: 10 TAC §53.31(l)

AMFI	Form of Assistance
≤30% AMFI	0% interest, 5-year deferred, forgivable loan, or grant agreement.
>30% and ≤50% AMFI	0% interest, 10-year deferred, forgivable loan, or grant agreement.
>50% and ≤60% AMFI	0% interest, 15-year deferred, forgivable loan, or grant agreement.
>60% and ≤80% AMFI	0% interest, 15-year term repayable loan.

Figure: 10 TAC §53.80(4)

Rent	Resolution from Local Government	Maximum Award as % of TDC	% of TDC from other sources
FMR greater than High Home	No	90%	10%
FMR greater than High Home	Yes	92%	8%
FMR equal to High Home	No	93%	7%
FMR equal to High Home	Yes	95%	5%
FMR equal to Low Home	No	96%	4%
FMR equal to Low Home	Yes	98%	2%

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Intent to Participate: County Grants for Implementation of Feral Hog Abatement Technologies

The Texas Department of Agriculture (TDA) is seeking participation in the County Grants for Implementation of Feral Hog Abatement Technologies Program. The Program is designed to encourage counties across the state to make a concentrated and coordinated effort to reduce the feral hog population and damage caused by these animals during the month of October, 2010. In order to participate, the county must complete the Notice of Intent to Participate form and submit it to TDA by **September 30, 2010.** Faxed or scanned forms with signature are acceptable. Forms may be faxed to TDA at (888)223-9048; scanned documents submitted by email to: Grants@TexasAgriculture.gov; and hard-copies mailed to P.O. Box 12847, Austin, Texas 78711, or hand-delivered to TDA at 1700 N. Congress Avenue, 11th Floor, Austin, Texas 78701.

In order to be eligible for a grant, counties will be required to submit a completed Grant Application by November 12, 2010. Participating counties will be required to document the following results for the period of October 1, 2010 through October 31, 2010:

Number of feral hogs taken in the county, as certified by the county.

Number of participants at a TDA-approved education program about feral hog abatement technologies.

Number of acres in the county that landowners will commit, in writing, to allow access by county trappers or Wildlife Services (WS) Specialists for the purpose of removing feral hogs (subject to WS availability).

Based on the criteria above, awards will be made in the form of a grant that the county will be able to use on feral hog abatement related expenditures during the 2011 calendar year. Awards will be made as follows: The highest scoring county will be awarded $25,000; the second highest will be awarded $15,000; and the third highest will be awarded $10,000.

Additionally, the county that has the largest contiguous tract of land that owners will permit approved trappers to access will be guaranteed to have WS Specialists conduct removal services.

Complete guidelines will be provided to interested counties prior to October 1, 2010. Participating counties will be required to complete a Grant Application with the Department. Awardees will be required to enter into a grant agreement.

SECTION A – COUNTY INFORMATION

County Name

SECTION B – PROJECT COORDINATOR

☐ Mr. ☐ Dr. ☐ Ms. ☐ Other _____	Position Title		
First Name	Last Name		
Mailing Address	City	State	Zip
Phone No. / Fax No.	E-mail Address		

SECTION C – SIGNATURE

County Official Signature	Title	Date
_____	☐ County Judge ☐ County Commissioner ☐ Other _____	_____

For questions or requests for additional information, counties may contact Mr. Rick Sumner, Grants Specialist, at (512) 463-2805 or by email at Grants@TexasAgriculture.gov.

TRD-201005380

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: September 15, 2010

♦ ♦ ♦

Request for Applications: Best Practices in Nutrition Education Grant Program

Statement of Purpose.

The Texas Department of Agriculture (TDA) is authorized by §12.0027 of the Texas Agriculture Code to administer and implement a Nutrition Outreach Program to promote better health and nutrition programs and prevent obesity among children in this state. The objective of the program is to increase awareness of the importance of good nutrition, especially for children, and to encourage children's health and well being through education, exercise and eating right. TDA's Nutrition Outreach Program consists of two grant programs:

1. Nutrition Education Grant Program (NEGP) - a program that incentivizes the creation of new nutrition education programs in schools and childcare institutions: and

2. Best Practices in Nutrition Education Grant Program (BP-NEGP) - a program that rewards the expansion of existing nutrition education programs in public schools only.

Total funding for these grant programs during the 2011 funding cycle is approximately $400,000.

In accordance with Texas Education Code §38.026, the state legislature has appropriated funding to the TDA for distribution, pursuant to the BPNEGP, to public school campuses that are in good standing with the Texas Comptroller's office and have clearly demonstrated the use of best practices in nutrition education. TDA will begin accepting applications from eligible public school campuses on **October 1, 2010.**

Applicants may seek up to $10,000 per campus for expenses related to the supplementation, improvement, or expansion of the best practice which the application illustrates. Total funding awarded to a single school district may be limited to $100,000. Other restrictions or funding limitations may also be considered during the award process. Selected applications will receive funding on a cost-reimbursement basis.

Eligibility. Grant applications will be accepted from any individual public school in the State of Texas. Administrative rules relating to the BPNEGP are located in Title 4 of the Texas Administrative Code (4 TAC), Chapter 26.

Funding Parameters.

TDA reserves the right to fund projects partially or fully. TDA reserves the right to negotiate individual elements of any proposal and to reject any and all proposals. TDA and the evaluation panel are under no legal or other obligation to execute a grant on the basis of a submitted application. TDA will not pay for any costs incurred by any entity in responding to this request. Selected applications will receive funding on a cost-reimbursement basis.

Application Requirements.

Form Requirements:

Applications must be submitted on Form ER-111 in order to be considered. Responses, including Form ER-111, may not exceed six pages. The required form is available on TDA's website at: www.TexasAgriculture.gov.

Technical Requirements:

The following must be included:

1. School/Program Contact Information:

Include name and address of school; name, title, and contact information of primary contact person for program; and name and address of school district. Indicate whether the primary contact person is available during normal business hours, 8:00 a.m. - 5:00 p.m., Monday - Friday.

2. Authorized Official's Signature:

Signature of an individual authorized to execute contracts and/or agreements on behalf of the applicant.

3. Project Summary:

Brief Summary of the program/activity and how funds will be used.

4. Project Description:

Provide a detailed description of the program/activity. Please attach photos or other supporting documentation to this application as needed.

5. Project Benefits:

Provide a detailed description of the benefits of the proposed project/activity, including how the project will improve the children's understanding of nutrition education and improve participation in physical activity.

6. Project Audience:

Provide a description of how the program/activity reaches one or more of these audiences, and include the number reached: (1) the student population; (2) parent and teacher population; or (3) the community.

7. Project Results:

Provide a detailed description of how quantifiable results have, or will be, demonstrated by the program/activity.

8. Project Enhancement:

Provide a detailed explanation of how grant funds would be used to supplement and expand the best practice.

9. Project Focus Area:

Provide a description of how the best practice addresses one or more of these focus areas: (1) increasing appeal and acceptability of meals; (2) enhancing and increasing nutrition education efforts; (3) increasing participation in meal program; or (4) increasing nutritional value of school meals.

10. Current Budget Information:

Provide information on current project budget for the program/activity that represents a best practice in nutrition education.

11. Proposed Budget Information:

Provide information on proposed project budget to be implemented with grant funds, if awarded, to further the program/activity that represents a best practice in nutrition education.

Evaluation of Applications.

Based on the requirements set forth above, a panel appointed by the Commissioner of Agriculture will evaluate applications. The panel will review the applications and make funding recommendations to the Commissioner. The panel will consist of representatives from the Texas Department of Agriculture, as well as experts in the fields of health, nutrition education and childhood education.

Proposals will be evaluated using the definition of "best practice" established in 4 TAC §26.41. Preference will be given to projects that are unique in nature and that meet the best practice criteria set out by TDA. TDA may also consider in its review of each application: whether the proposed project/activity incorporates sustainability or otherwise supports continuation of the project/activity long-term or beyond the grant award period; whether nutrition education conveyed by the program is acceptable to TDA nutrition experts; whether the student population to

be reached by the program is comprised of a large percentage of students eligible to receive free and reduced meals; whether the applicant is in good standing with TDA as a contractor in Food and Nutrition Division programs.

"Best practice" is defined in 4 TAC §26.41 as: "An activity or program administered by a grant applicant which addresses one of four focus areas: (A) increasing appeal and acceptability of meals; (B) enhancing and increasing nutrition education efforts; (C) increasing participation in meal program; or (D) increasing nutritional value of school meals; and (E) addresses one of the following audiences: (i) the student population; (ii) parent and teacher population; or (iii) the community."

Award Information and Notification.

The evaluation panel will recommend applications for funding by the BPNEGP. The Texas Department of Agriculture will make the final funding decisions.

Project coordinators will be required to submit quarterly progress and budget reports. Upon completion of the program, a Final Compliance Report of the educational results of the program and images to document such results will be due within thirty (30) days.

Grant Agreement. Public school districts in the State of Texas that qualify to receive grant funds must execute a Grant Agreement with TDA, prior to the disbursement of any grant funds. Grant Agreements will not be made with individual schools.

Reporting Requirements.

Approved projects are required to submit the following reports:

1. Payment Requests.

The BPNEGP is administered on a cost reimbursement basis. Funds will be disbursed once a proper payment request, including back-up documentation, has been received by TDA. Payment Requests may be submitted with no greater frequency than monthly.

2. Project Progress Reports.

These reports, due on a quarterly basis, are from one to three pages in length and detail accomplishment of project objectives for the time periods specified in the award document.

3. Final Compliance Report.

This report is due either thirty (30) days after completion of the project or upon termination of the agreement. The final report shall be submitted in a hard copy format and an electronic format should be emailed to TDA. The final report shall contain:

a. Project summary: Description of how grant award was used to further implement the best practice program/activity; its objectives, importance, efforts, results, and possible future applications of the project;

b. Description of the successes, challenges, and any limitations on the further implementation of the best practice program/activity associated with the grant award;

c. Description of future plans, including how the best practice program/activity will continue after the grant is expended and how additional funding might address expansion efforts; and

d. Photographs - to show program execution and/or document results.

4. Project Budget Reports.

Budget reports detailing the amount of the grant award spent to date are due on a quarterly basis for the time periods specified in the awards document.

5. Final Budget Report.

This report is due thirty (30) days after the completion of the project or the termination of the agreement.

General Compliance Information.

1. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

2. Any delegation by the Grantee to a subcontractor regarding any duties and responsibilities imposed by the grant award shall be approved in advance by TDA and shall not relieve the Grantee of its responsibilities to TDA for their performance.

3. Any information or documentation submitted to TDA as part of the project grant proposal is subject to disclosure under the Texas Public Information Act.

4. Awarded grant projects must remain in full compliance with state and federal laws and regulations or be subject to termination at the discretion of TDA.

5. Upon grant award, TDA and the Texas State Auditor's Office shall have access to and the right to examine all books, accounts, records, files and other papers or property belonging to or in use by the Grantee and pertaining to the grant award. Additionally, these records must remain available and accessible no less than three (3) years after the termination of the grant project.

6. If the Grantee has a financial audit performed in any year during which Grantee receives funds from Grantor, and if the Grantor requests information about the audit, the Grantee shall provide such information to TDA or provide information as to where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

7. In accordance with Texas Government Code Ann., §783.007, grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). Upon grant award, grantees can be provided with a copy or it may be downloaded from www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc.

Submission Dates/Locations.

Forms required for submitting an application are available by accessing TDA's website at: www.TexasAgriculture.gov, or by e-mailing Grants@TexasAgriculture.gov. One hard copy and one electronic copy of the application in Microsoft Word format must be submitted. TDA will begin accepting applications from eligible organizations on **October 1, 2010.** Applications must be submitted on the form provided by TDA. The applications (hard and soft copy) must be received by TDA no later than 5:00 p.m. on **November 15, 2010.** If you mail the application, please make sure the application is in a properly addressed envelope, bearing sufficient postage and received by TDA no later than **November 15, 2010.**

Physical Address (For hand-delivery and overnight mail carriers): Texas Department of Agriculture, Best Practices in Nutrition Education Grant Program, Attn: Rick Sumner, 1700 N. Congress Ave., 11th Floor, Austin, TX 78701.

Mailing Address (For U.S. Postal Service mailings): Texas Department of Agriculture, Best Practices in Nutrition Education Grant Program, Attn: Rick Sumner, P.O. Box 12847, Austin, TX 78711.

Texas Public Information Act. All proposals shall be deemed, once submitted, to be the property of TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

Further Information.

Additional information about the BPNEGP, the application process and program rules can be found on TDA's website at: www.TexasAgriculture.gov. In addition, organizations may contact Mr. Rick Sumner, Grants Specialist, at (512) 463-2805 or by email at Grants@TexasAgriculture.gov.

TRD-201005374
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: September 15, 2010

♦ ♦ ♦

Request for Applications: Nutrition Education Grant Program

Statement of Purpose.

The Texas Department of Agriculture (TDA) is authorized by §12.0027 of the Texas Agriculture Code to administer and implement a Nutrition Outreach Program to promote better health and nutrition programs and prevent obesity among children in this state. The objective of the program is to increase awareness of the importance of good nutrition, especially for children, and to encourage children's health and well being through education, exercise and eating right. TDA's Nutrition Outreach Program consists of two grant programs:

1. Nutrition Education Grant Program (NEGP) - a program that incentivizes the creation of new nutrition education programs in schools and childcare institutions; and

2. Best Practices in Nutrition Education Grant Program (BP-NEGP) - a program that rewards the expansion of existing nutrition education programs in public schools only.

Total funding for these grant programs during the 2011 funding cycle is approximately $400,000.

In accordance with Texas Human Resources Code §33.028, the state legislature has appropriated funding to the TDA for distribution, pursuant to the NEGP, to provide grants for organizations that are in good standing with the Texas Comptroller's office to incorporate nutrition education into their programs provided for children. TDA will begin accepting applications from eligible organizations on **October 1, 2010.**

Applicants may seek up to $5,000 per application for expenses related to implementation of the nutrition education program proposed in the application. Total funding awarded to a single school district or parent organization may be limited to $50,000. Other restrictions or funding limitations may also be considered during the award process. Selected applications will receive funding on a cost-reimbursement basis.

Eligibility.

Administrative rules relating to the NEGP are located in Title 4 of the Texas Administrative Code (4 TAC), Chapter 26. To be eligible for NEGP funds, an applying organization must either:

1. Plan to use the grant money to operate nutrition education programs for children who are at least three years of age but younger than five years of age, and be a participant in one of the following programs:

a. the Child and Adult Food Care Program administered by TDA;

b. a Head Start Program, as defined in 42 USC 9801 et seq., and 45 CFR Parts 1301-1311;

c. a Summer Nutrition Program administered by TDA (Eligible programs under this heading would include non-profits, local governments, school districts, or any other entity that serves as a sponsor for the Seamless Summer Option or the Summer Food Service Program administered by TDA. School districts that serve as sponsors are eligible because a summer nutrition program is a community program.); and

d. other early childhood education program; or

2. Be a community or faith-based organization that provides recreational, social, volunteer, leadership, mentoring, or developmental programs provided for children younger than 19 years of age.

Funding Parameters.

TDA reserves the right to fund projects partially or fully. TDA reserves the right to negotiate individual elements of any proposal and to reject any and all proposals. TDA and the evaluation panel are under no legal or other obligation to execute a grant on the basis of a submitted application. TDA will not pay for any costs incurred by any entity in responding to this request. Selected applications will receive funding on a cost-reimbursement basis.

Application Requirements.

Form Requirements:

Applications must be submitted on Form ER-111 in order to be considered. Responses, including Form ER-111, may not exceed six pages. The required form is available on TDA's website at: www.TexasAgriculture.gov.

Technical Requirements:

The following must be included:

1. *School/Organization Contact Information:*

Include name and address of school; name, title, and contact information of primary contact person for program; and name and address of school district. Indicate whether the primary contact person is available during normal business hours, 8:00 a.m. - 5:00 p.m., Monday - Friday.

2. *Authorized Official's Signature:*

Signature of an individual authorized to execute contracts and/or agreements on behalf of the applicant.

3. *Project Summary:*

Brief Summary of the program/activity and how funds will be used.

4. *Project Description:*

Provide a detailed description of the program/activity. Please attach photos or other supporting documentation to this application as needed.

5. *Project Benefits:*

Provide a detailed description of the benefits of the proposed project/activity, including how the project will improve the children's understanding of nutrition education and improve participation in physical activity.

6. *Project Audience:*

Provide a description of how the program/activity reaches one or more of these audiences, and include the number reached: (1) the student population; (2) parent and teacher population; or (3) the community.

7. *Project Results:*

Provide a detailed description of how quantifiable results have, or will be, demonstrated by the program/activity.

8. *Proposed Budget Information:*

Provide information on proposed project budget to be implemented with grant funds, if awarded.

Evaluation of Applications.

Based on the requirements set forth above, a panel appointed by the Commissioner of Agriculture will evaluate applications. The panel will review the applications and make funding recommendations to the Commissioner. The panel will consist of representatives including, but not limited to the following: the Texas Department of Agriculture, nutrition education, and childhood education.

The proposals will be evaluated using the criteria established in 4 TAC §26.55, which states that preference will be given to projects that are unique in nature, address the issues of child nutrition and child nutrition education; and target one of the following audiences: students/participants; parents and staff; or community. Proposals may also include other components such as physical activity and/or education.

TDA may also consider in its review of each application: whether the proposed project/activity incorporates sustainability or otherwise supports continuation of the project/activity long-term or beyond the grant award period; whether nutrition education conveyed by the program is acceptable to TDA nutrition experts; whether the student population to be reached by the program is comprised of a large percentage of students eligible to receive free and reduced meals; whether the applicant is in good standing with TDA as a contractor in Food and Nutrition Division programs.

Award Information and Notification.

The evaluation panel will recommend applications for funding by the NEGP. TDA will make the final funding decisions.

Project coordinators will be required to submit quarterly progress reports and budget reports. Upon completion of the program, a Final Compliance Report of the educational results of the program and photographs to document such results will be due within thirty (30) days.

Grant Agreement. Eligible organizations that qualify to receive grant funds must execute a Grant Agreement with TDA, prior to the disbursement of any grant funds.

Reporting Requirements. Approved projects are required to submit the following reports:

1. *Payment Requests.*

The NEGP is administered on a cost reimbursement basis. Funds will be disbursed once a proper payment request, including back-up documentation, has been received by TDA. Payment Requests may be submitted with no greater frequency than monthly.

2. *Project Progress Reports.*

These reports are due on a quarterly basis, will range from one to three pages in length, and detail accomplishment of project objectives for the time periods specified in the award document.

3. *Final Compliance Report.*

This report is due either thirty (30) days after completion of the project or upon termination of the contract. The final report shall be submitted in a hard copy format and an electronic format should be emailed to TDA. The final report shall contain:

a. Project summary: Description of how grant award was used to further implement the best practice program/activity; its objectives, importance, efforts, results, and possible future applications of the project;

b. Description of the successes, challenges, and any limitations on the further implementation of the best practice program/activity associated with the grant award;

c. Description of future plans, including how the best practice program/activity will continue after the grant is expended and how additional funding might address expansion efforts; and

d. Photographs - to show program execution and/or document results.

4. *Project Budget Reports.*

Budget reports detailing the amount of the grant award spent to date are due on a quarterly basis for the time periods specified in the awards document.

5. *Final Budget Report.*

This report is due thirty (30) days after the completion of the project or the termination of the contract.

General Compliance Information.

1. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

2. Any delegation by the Grantee to a subcontractor regarding any duties and responsibilities imposed by the grant award shall be approved in advance by TDA and shall not relieve the Grantee of its responsibilities to TDA for their performance.

3. Any information or documentation submitted to TDA as part of the project grant proposal is subject to disclosure under the Texas Public Information Act.

4. Awarded grant projects must remain in full compliance with state and federal laws and regulations or be subject to termination at the discretion of TDA.

5. Upon grant award, TDA and the Texas State Auditor's Office shall have access to and the right to examine all books, accounts, records, files and other papers or property belonging to or in use by the Grantee and pertaining to the grant award. Additionally, these records must remain available and accessible no less than three (3) years after the termination of the grant project.

6. If the Grantee has a financial audit performed in any year during which Grantee receives funds from Grantor, and if the Grantor requests information about the audit, the Grantee shall provide such information to TDA or provide information as to where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

7. In accordance with Texas Government Code Annotated, §783.007, grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). Upon grant award, grantees can be provided with a copy or it may be downloaded from www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc.

Submission Dates/Locations.

Forms required for submitting an application are available by accessing TDA's website at: www.TexasAgriculture.gov, or by e-mailing Grants@TexasAgriculture.gov. One hard copy and one electronic copy of the application in Microsoft Word format must be submitted. TDA will begin accepting applications from eligible organizations on **October 1, 2010.**Applications must be submitted on the form provided by TDA. The applications (hard and soft copy) must be received by TDA no later than 5:00 p.m. on **November 15, 2010.** If you mail the application, please make sure the application is in a properly addressed envelope, bearing sufficient postage and received by TDA no later than **November 15, 2010.**

Physical Address (For hand-delivery and overnight mail carriers): Texas Department of Agriculture, Nutrition Education Grant Program,

Attn: Rick Sumner, 1700 N. Congress Ave., 11th Floor, Austin, TX 78701.

Mailing Address (For U.S. Postal Service mailings): Texas Department of Agriculture, Nutrition Education Grant Program, Attn: Rick Sumner, P.O. Box 12847, Austin, TX 78711.

Texas Public Information Act.

All proposals shall be deemed, once submitted, to be the property of TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

Further Information.

Additional information about the NEGP, the application process and program rules can be found on TDA's website at: www.TexasAgriculture.gov. In addition, organizations may contact Mr. Rick Sumner, Grants Specialist at (512) 463-2805 or by email at Grants@TexasAgriculture.gov.

TRD-201005373
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: September 15, 2010

♦ ♦ ♦

Cancer Prevention and Research Institute of Texas

Request for Applications 11-1 Texans Conquer Cancer Program Patient Support Services

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified non-profit organizations located in the State of Texas that would provide support services for cancer patients such as transportation to and from treatment, wigs, food, and lodging. Successful applicants are eligible for a grant award of up to $2,500 to be used by August 31, 2011.

A detailed Request for Applications (RFA) and the application form are available online at www.cprit.state.tx.us. Applications will be accepted beginning on Friday, September 24, 2010, and should be submitted in writing to: Prevention Program, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, or through e-mail to applications@cprit.state.tx.us. Applications are due on or before 3:00 p.m. Central Time on Wednesday, November 10, 2010. CPRIT will not accept late applications.

Funds for this program are available from sales of the Texans Conquer Cancer license plate. To learn more about the license plate program, visit www.texansconquercancer.org.

TRD-201005372
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: September 15, 2010

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of September 3, 2010, through September 9, 2010. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on September 15, 2010. The public comment period for this project will close at 5:00 p.m. on October 15, 2010.

FEDERAL AGENCY ACTIONS:

Applicant: Reef Exploration, LP; Location: The project site is located in the Gulf Intracoastal Waterway on the northeast side, approximately 4 miles southwest of Tiki Island and 1 mile northeast of the mouth of Greens Lake, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Virginia Point, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 307689; Northing: 3240521. Project Description: The applicant proposes to dredge a 359-foot by 565-foot drilling basin area to a depth of 9 feet below low tide for the construction and installation of a drilling barge; to operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include the installation of two 8,078-linear-foot, 6-inch diameter pipelines to tie-in into the existing Halls Facility. The footprint of the facility will impact approximately 0.9 acres low marsh, 1.9 acres of high marsh, and 1.7 acres of open water. To compensate for these unavoidable impacts to aquatic resources, the applicant proposes to place 53,800 cubic yards of dredged material at a beneficial use site in order to restore approximately 11.3 acres of wetlands (4.2 acres of high marsh, 5.3 acres of low marsh habitat, 0.9 acres of tidal channels, and 0.9 acres of hard substrate at the site). CMP Project No.: 10-0171-F1. Type of Application: U.S.A.C.E. permit application #SWG-2010-00273 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Nueces County; Location: The project is located on the south shoreline area of the Channel to Aransas Pass, off of State Highway 361 and approximately 2.3 miles east of Aransas Pass, in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Estes, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 685957; Northing: 3086308. Project Description: The applicant is seeking authorization to replace an existing bulkhead and remove six existing piers. The applicant also proposes to regrade/elevate an existing parking area which will result in the filling of approximately 0.82 acres of wetlands that have developed in and around the parking lot. The purpose of the project is to repair damage associated with Hurricane Ike and also to render the parking lot more usable to future tenants who will utilize the site with activities similar to those that currently exist. Future tenants will be responsible for securing permits for their respective structures, such as piers and docks; each will then be subject to a separate Department of the Army permit evaluation process. CMP Project No.: 10-0170-F1. Type of Application: U.S.A.C.E. permit application #SWG-2010-00635 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

FEDERAL AGENCY ACTIVITY:

Agency: United States Coast Guard; Project Description: The agency is proposing making permanent changes to operating schedules

of drawbridges and implementing deviations to drawbridge operating schedules on a temporary basis (180 days or less) within the 29 states and five territories that in whole or in part are adjacent to, adjoining, intersecting by or bounded by coastal areas. The agency is requesting a National General Consistency Determination for future drawbridge regulatory changes because of its insignificant direct or indirect coastal effect. CMP Project No.: 10-0172-F2. Type of Agency Activity: U.S.C.G. national general consistency determination is being reviewed under the enforceable policies of Texas' approved Coastal Management Program under Section 307(c)(1) of the Coastal Zone Management Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action or activity should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ms. Kate Zultner, Consistency Review Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.state.tx.us. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201005277
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: September 13, 2010

♦ ♦ ♦

Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period August 2010, as required by Tax Code, §202.058, is $60.70 per barrel for the three-month period beginning on May 1, 2010, and ending July 31, 2010. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of August 2010, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period August 2010, as required by Tax Code, §201.059, is $3.55 per mcf for the three-month period beginning on May 1, 2010, and ending July 31, 2010. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of August 2010, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201005347
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: September 14, 2010

♦ ♦ ♦

Notice of Contract Amendment

The Comptroller of Public Accounts (Comptroller) announces the amendment of a contract with Linebarger Goggan Blair & Sampson, LLP, The Terrace II, 2700 Via Fortuna Drive, Suite 400, Austin, Texas 78746, awarded under Request for Proposals (RFP) No. 190b, for collection services:

The total contract amount is based on a contingent fee of 30% of all amounts collected by the contractor. The initial term of the contract was February 4, 2009 through August 31, 2010. The amendment extended the term of the contract through August 31, 2011.

The Notice of Request for Proposals was published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7338). The Notice of Award was published in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1280).

TRD-201005252
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 9, 2010

♦ ♦ ♦

Notice of Contract Amendment

The Comptroller of Public Accounts (Comptroller) announces the amendment of a contract with McConnell & Jones LLC, 3040 Post Oak Boulevard, Suite 1600, Houston, Texas 77056, awarded under Request for Proposal (RFP) No. 191d for professional certified public accounting services to the Comptroller and the Texas Prepaid Higher Education Tuition Board.

The total amount of the contract is not to exceed $193,238.00. The initial term of the contract was June 30, 2009 through August 31, 2010. The amendment extended the term of the contract through August 31, 2011.

The notice of request for proposals (RFP #191d) was published in the January 16, 2009, issue of the *Texas Register* (34 TexReg 352). The notice of award was published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4750).

TRD-201005253
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 9, 2010

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/20/10 - 09/26/10 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/20/10 - 09/26/10 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-201005328

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 13, 2010

♦ ♦ ♦

Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from East Texas Professional Credit Union (Longview) seeking approval to merge with Synergy Eastex Federal Credit Union (Longview), with East Texas Professional Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201005365
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 15, 2010

♦ ♦ ♦

Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from GECU, El Paso, Texas to expand its field of membership. The proposal would permit persons who work or reside in the Counties of Dona Ana and Otero, New Mexico, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201005364
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 15, 2010

♦ ♦ ♦

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application:

Application to Expand Field of Membership--Vacated

Hockley County School Employees Credit Union, Levelland, Texas.

Application to Amend Articles of Incorporation--Approved

NCI Community Development Credit Union, Houston, Texas--See *Texas Register* issue dated July 30, 2010.

Application for a Merger or Consolidation--Approved

TexasOne Community Credit Union (Houston) and PrimeWay Federal Credit Union (Houston)--See *Texas Register* issue dated February 26, 2010.

TRD-201005366
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 15, 2010

♦ ♦ ♦

Employees Retirement System of Texas

Request for Proposal

In accordance with §1551.055 and §1551.062 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is soliciting proposals from qualified auditing firms to perform audits of certain selected Carriers, HMOs and Third Party Administrators of the HealthSelectSM Programs, which may include life, health, and medical programs, provided to participants under the Texas Employees Group Benefits Program ("GBP") beginning Fiscal Year 2010 through 2012. A qualified provider of auditing services ("Vendor") shall supply the level of services required in the Request for Proposal ("RFP") and meet other requirements that are in the best interest of ERS, the GBP health and welfare programs, their participants, or the state of Texas, and shall be required to execute a Contractual Agreement ("Contract") provided by, and satisfactory to, ERS.

As provided in Chapter 1551 of the Texas Insurance Code, ERS is the administrator for the GBP which provides health and welfare benefits to over 500,000 state agencies and certain higher education employees, retirees, and their dependents. ERS is responsible for contracting with health, dental, life, and disability carriers, and third party administrators to provide coverage for GBP participants or administer such coverage throughout the state of Texas. The services requested and described in the RFP include auditing a statistically valid sample of claims processed, contract compliance, and administrative costs of the administrators specified in the RFP. A Vendor wishing to respond to this request shall meet the minimum requirements as well as those other evaluation criteria as more fully specified in Article II of the RFP. Each proposal will be evaluated individually and relative to the proposal of other qualified Vendors.

The RFP will be available in late September from ERS' website and will include documents for the Vendor's review and response. To access the secured portion of the RFP website, interested Vendors shall email their request to the attention of IVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall reflect the Vendor's legal name, street address, phone and fax numbers, and email address for the organization's direct point of contact. Upon receipt of this information, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP when the document is published on the Vendor portion of the ERS website.

General questions concerning the RFP and/or ancillary bid materials should be sent to the IVendor Mailbox where responses, if applicable, are updated frequently.

To be eligible for consideration, all Vendors are required to submit a total of six (6) sets of the proposal in a sealed container. One (1) proposal shall be labeled as an "Original" and include fully executed Signature pages, Contractual Agreement and Business Associate Agreement, **signed in blue ink,** and without amendment or revision. Three (3) additional duplicates of the proposal, including all required exhibits, shall be provided in printed format. Finally, two (2) complete copies shall be submitted on CD-ROMs in Excel or Word format. No PDF documents (with the exception of financial materials) may be reflected on the CD-ROMs. All materials shall be executed as noted above and must be received by ERS no later than 12:00 Noon (CT) on October 27, 2010.

ERS reserves the right to reject any and/or all proposals and/or call for new proposals if deemed by ERS to be in the best interests of ERS, the GBP health and welfare programs, their participants or the state of Texas. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or the RFP or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where ERS deems it to be in the best interest of ERS, the GBP health and welfare programs, their participants or the state of Texas.

TRD-201005333
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: September 13, 2010

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 25, 2010.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 25, 2010.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: B & J Water Company; DOCKET NUMBER: 2010-1009-PWS-E; IDENTIFIER: RN101257889; LOCATION: Grimes County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.41(c)(3)(O) and §290.43(c)(4), by failing to provide an intruder-resistant fence; 30 TAC §290.43(c)(4), by failing to provide liquid level indicators for the ground storage tanks; 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(a)(1), by failing to provide a well capacity of 0.6 gallons per minute per connection; and 30 TAC §290.46(s)(1), by failing to calibrate the well meter at least once every three years; PENALTY: $356; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: City of Beckville; DOCKET NUMBER: 2010-1141-MWD-E; IDENTIFIER: RN101720621; LOCATION: Panola County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010718001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for ammonia nitrogen (NH_3N); and 30 TAC §305.125(17) and TPDES Permit Number WQ0010718001, Sludge Provisions, by failing to timely submit the annual sludge report; PENALTY: $4,737; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: City of Bridge City; DOCKET NUMBER: 2010-0766-MWD-E; IDENTIFIER: RN102846037; LOCATION: Bridge City, Orange County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010051001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for total suspended solids (TSS) and five-day biochemical oxygen demand; PENALTY: $18,600; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Center Gas Fuels, Inc.; DOCKET NUMBER: 2010-1415-PST-E; IDENTIFIER: RN102427903; LOCATION: Littlefield, Lamb County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(5) COMPANY: Lynda F. Cochran; DOCKET NUMBER: 2010-0842-PST-E; IDENTIFIER: RN101756930; LOCATION: Orange County; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, a underground storage tank (UST) system; 30 TAC §334.49(a)(2) and §334.54(c)(1) and the Code, §26.3475(d), by failing to ensure the UST system is continuously protected from corrosion; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay UST registration and associated late fees; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Dril-Quip, Inc.; DOCKET NUMBER: 2010-1189-MWD-E; IDENTIFIER: RN104784640; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014655001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for TSS and NH_3N; PENALTY: $3,360; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Eastland County Water Supply District; DOCKET NUMBER: 2010-1101-MWD-E; IDENTIFIER: RN102185295; LOCATION: Eastland County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013726001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limitations for flow, pH, and TSS; and 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0013726001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $4,392; ENFORCEMENT COORDINATOR: J.R. Cao, (512) 239-2543; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: Salvador G. Gonzalez dba Gonzalez Dairy; DOCKET NUMBER: 2009-1604-AGR-E; IDENTIFIER: RN101961753; LOCATION: Harriet, Tom Green County; TYPE OF FACILITY: animal feeding operation; RULE VIOLATED: 30 TAC §321.47(e)(6) and TCEQ Agreed Order, Docket Number 2008-0405-AGR-E, Ordering Provision Number 2.b.ii, by failing to install markers showing the volume for a 25-year, 24-hour rainfall event or a 100-year, 24-hour rainfall event in all retention control structures (RCSs); 30 TAC §321.47(c)(1) and TCEQ Agreed Order, Docket Number 2008-0405-AGR-E, Ordering Provision Number 2.c, by failing to locate, construct, and manage the control facility in a manner that will protect surface and groundwater quality; and 30 TAC §321.47(d)(3) and TCEQ Agreed Order, Docket Number 2008-0405-AGR-E, Ordering Provision Number 2.e, by failing to ensure that the design and construction of the RCS is certified by a licensed Texas professional engineer after its modification or repair; PENALTY: $6,600; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(9) COMPANY: City of Kirbyville; DOCKET NUMBER: 2010-0783-MLM-E; IDENTIFIER: RN101390854; LOCATION: Kirbyville, Jasper County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to ensure that an air gap or backflow prevention assembly is provided at all locations where an actual or potential contamination hazard exists; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with a 16-mesh or finer corrosion-resistant screen; 30 TAC §290.46(m)(6), by failing to conduct maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.43(3), by failing to enclose all potable water storage tanks with an intruder-resistant fence; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(n)(2), by failing to maintain an accurate and up-to-date map of the distribution system; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzers at least once every 30 days using chlorine solutions of known concentrations; and 30 TAC §288.20(c), by failing to review and update the drought contingency plan at least once every five years; PENALTY: $2,617; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Oak Grove Water Supply Corporation; DOCKET NUMBER: 2010-1004-PWS-E; IDENTIFIER: RN101455509; LOCATION: Bowie County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; and 30 TAC §290.46(e) and THSC, §341.033(a), by failing to operate the facility by a licensed operator who holds a class "C" or higher ground water license; PENALTY: $200; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: PALMERA, INC. dba Zang Food Store; DOCKET NUMBER: 2010-1065-PST-E; IDENTIFIER: RN101764918; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $3,330; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: San Antonio Water System; DOCKET NUMBER: 2010-1007-MWD-E; IDENTIFIER: RN100851518; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ001013700, Permit Conditions Number 2.g, and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of municipal wastewater into water in the state; and 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0010137008, Monitoring and Reporting Requirements Number 7.a, by failing to report an unauthorized discharge orally or by facsimile transmission within 24 hours of becoming aware of the discharge; PENALTY: $32,700; Supplemental Environmental Project offset amount of $32,700 applied to San Antonio River Authority - *San Antonio River Water Quality Monitoring Network;* ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: Oraphine Douangkesone dba Snack & Tackle; DOCKET NUMBER: 2010-0980-PST-E; IDENTIFIER: RN101432789; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to provide a release detection method for the UST by failing to conduct reconciliation of inventory control records at least once a month; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; and 30 TAC §334.49(b)(2) and the Code, §26.3475(d), by failing to maintain all components electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater, or any other water, and from other metallic components; PENALTY: $7,175; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-201005343

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 14, 2010

♦ ♦ ♦

Notice of Correction to Agreed Order Number 2

In the July 9, 2010, issue of the *Texas Register* (35 TexReg 6115), the Texas Commission on Environmental Quality (commission) published a notice of an Agreed Order Number, specifically Item Number 2. The reference to Exxon Mobil Corporation was submitted in error by the commission with a Supplemental Environmental Project being Houston Regional Monitoring Corporation (HRMC) - HRMC Houston Area Air Monitoring and instead should have been submitted as Harris County Ambient and Meteorological Air Monitoring.

For questions concerning this error, please contact Anna Treadwell at (512) 239-0974.

TRD-201005357
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 14, 2010

♦ ♦ ♦

Notice of Correction to Agreed Order Number 4

In the August 27, 2010, issue of the *Texas Register* (35 TexReg 7930), the Texas Commission on Environmental Quality (commission) published a notice of an Agreed Order Number, specifically Item Number 4. The reference to Exxon Mobil Corporation was submitted in error by the commission with a Supplemental Environmental Project being Houston Regional Monitoring Corporation (HRMC) - HRMC Houston Area Air Monitoring and instead should have been submitted as Harris County Ambient and Meteorological Air Monitoring.

For questions concerning this error, please contact Anna Treadwell at (512) 239-0974.

TRD-201005356
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 14, 2010

♦ ♦ ♦

Notice of Correction to Default Order Number 12

In the August 20, 2010, issue of the *Texas Register* (35 TexReg 7589), the Texas Commission on Environmental Quality (commission) published a notice of Default Order Number, specifically Item Number 12. The reference to Santos Barcenas dba Bucketz was submitted in error by the commission with a penalty of $24,360 and instead should have been submitted as $21,630.

For questions concerning this error, please contact Gary Shiu at (713) 422-8916.

TRD-201005358
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 14, 2010

♦ ♦ ♦

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 25, 2010.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 25, 2010.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: City of Caddo Mills; DOCKET NUMBER: 2009-2028-MWD-E; TCEQ ID NUMBER: RN101721488; LOCATION: approximately 0.7 mile south of the intersection of State Highway 66 and Farm-to-Market (FM) Road 36, Caddo Mills, Hunt County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and TWC, §26.121(a), by failing to comply with permitted effluent discharge limits; PENALTY: $14,880; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Hays City Corporation dba Texcon Wholesale; DOCKET NUMBER: 2010-1243-PST-E; TCEQ ID NUMBER: RN103934402; LOCATION: 4906 Burleson Road, Austin, Travis County; and 618 FM Road 685, Pflugerville, Travis County (Cedars Store); TYPE OF FACILITY: fuel distributor; convenience store with underground petroleum storage tanks; RULES VIOLATED: 30 TAC §155.221 and Texas Health and Safety Code, §382.085(b), by failing to control displaced vapors by a vapor control or a vapor balance system during the transfer of gasoline from a tank-truck tank into the USTs at the station; PENALTY: $1,020; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(3) COMPANY: Henry Gonzales; DOCKET NUMBER: 2010-0454-MSW-E; TCEQ ID NUMBER: RN105727200; LOCATION: Lot 32, Western Trail, Bracketville, Kinney County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $1,050; STAFF ATTORNEY: Marshall Coover,

Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(4) COMPANY: Manuel Antonio Moscoso dba Texas Lawn Maintenance and Landscaping; DOCKET NUMBER: 2009-0751-LII-E; TCEQ ID NUMBER: RN105710271; LOCATION: 7206 Rittenhouse Village Road, Houston, Harris County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(b) and §344.30(a)(2), TWC, §37.003, Texas Occupations Code, §1903.251, by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration; PENALTY: $450; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201005359
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 14, 2010

♦ ♦ ♦

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed orders and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 25, 2010.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 25, 2010.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Angel Rodriguez; DOCKET NUMBER: 2009-2059-LII-E; TCEQ ID NUMBER: RN105848600; LOCATION: 3405 Pate Drive, Fort Worth, Tarrant County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5(b) and §344.30(a)(2), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possesses a current license or registration or unless he employs an individual who holds a current license; PENALTY: $250; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Jim Broom; DOCKET NUMBER: 2010-0179-PST-E; TCEQ ID NUMBER: RN101786945; LOCATION: northeast corner of County Road 780 and State Highway 21, Douglass, Nacogdoches County; TYPE OF FACILITY: three underground storage tanks (USTs) and a former convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which an applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; PENALTY: $6,300; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Julio Cesar Lozano; DOCKET NUMBER: 2010-0362-AGR-E; TCEQ ID NUMBER: RN105761118; LOCATION: 1737 Koberlin Street, San Angelo, Tom Green County; TYPE OF FACILITY: horse stable; RULES VIOLATED: 30 TAC §321.47(b)(3)(A), by failing to ensure that manure, litter, or wastewater generated on-site is stored, beneficially used, or disposed of in a manner that would protect surface and groundwater quality; PENALTY: $1,050; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(4) COMPANY: Semere Ogbazgi dba Hampton Service Station and Tesfaslassie Ogbazgi dba Hampton Service Station; DOCKET NUMBER: 2010-0479-PST-E; TCEQ ID NUMBER: RN102719168; LOCATION: 3818 North Hampton Road, Dallas, Dallas County; TYPE OF FACILITY: two USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of Stage II equipment at least once every 12 months; PENALTY: $3,758; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Virginia Franklin Fuller dba Franklin Water System 1 and dba Franklin Water System 3; DOCKET NUMBER: 2009-1295-PWS-E; TCEQ ID NUMBER: RN102817038 and RN101264372; LOCATION: 4701 Idalou Road, Lubbock, Lubbock County (RN102817038) and 4813 Idalou Road, Lubbock, Lubbock County (RN101264372); TYPE OF FACILITY: public water supplies that serve at least 25 people per day for at least 60 days per year; RULES VIOLATED: 30 TAC §290.45(f)(1), by failing to obtain a purchase water contract that authorizes a maximum hourly purchase rate plus the actual service pump capacity of at least 2.0 gallons per minute (gpm) per connection or provide at least 1,000 gpm and able to meet the peak hourly demands, whichever is less; 30 TAC §290.46(m),

by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water; 30 TAC §290.51(a)(3) and TCEQ DO, Docket Number 2005-1054-MLM-E, Ordering Provision 2.c.1., by failing to pay all annual and late Public Health Service (PHS) fees for TCEQ Financial Administration Account Number 91520224 for Fiscal Years 2005 - 2008; 30 TAC §290.41(c)(1)(D), by failing to ensure that livestock in pastures are not allowed within 50 feet of a water supply well; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.45(b)(1)(C)(ii), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii), by failing to provide two or more service pumps having a total capacity of 2.0 gpm per connection at each pump station or pressure plane; 30 TAC §290.46(u), by failing to plug an abandoned public water supply well with cement according to 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers), or test the well every five years or as required by the executive director to prove that they are in a non-deteriorated condition; 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines, water storage and pressure maintenance facilities, and all related appurtenances in a watertight condition; and 30 TAC §290.51(a)(3) and TCEQ DO, Docket Number 2005-1054-MLM-E, Ordering Provision 2.c.1., by failing to pay all annual and late PHS fees for TCEQ Financial Administration Account Number 91520080 for Fiscal Years 2005 - 2008; PENALTY: $2,799; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

TRD-201005360
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 14, 2010

♦ ♦ ♦

Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Major Amendment

Permit No. 1394B

APPLICATION. City of Irving, Hunter Ferrell Landfill, 825 W. Irving Boulevard, Irving, Dallas County, Texas 75060, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major permit amendment to request a lateral expansion and reconfiguring of the current disposal area and final contours of the facility, to utilize the Middle Tract for landfilling operations; and to reduce the maximum height of the landfill by 45 feet. The facility is located at 220 West Hunter Ferrell Road, Irving, Dallas County, Texas 75060. The TCEQ received the application on August 20, 2010. The permit application is available for viewing and copying at the City of Irving - City Hall, 825 West Irving Boulevard, Irving, Dallas County, Texas 75060.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html. If you need more information about this permit application or the permitting

process, please call TCEQ Office of Public Assistance, toll free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from City of Irving - Hunter Ferrell Landfill at the address stated above or by calling Brenda A. Haney, P.E., Director at (972) 721-8059.

Notice of Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration

Application No. 40248

APPLICATION. The City of Harlingen, P.O. Box 2207, Harlingen, Texas 78551, has applied to the TCEQ for proposed Registration (No. 40248), to construct and operate a Type V municipal solid waste processing facility. The proposed facility, City of Harlingen Transfer Station, will be located at 5002 East Harrison Avenue, Harlingen, Texas 78550, in Cameron County. This facility is requesting authorization to process and transfer municipal solid waste. The registration application is available for viewing and copying at the Harlingen Public Library, 410 76 Drive, Harlingen, Cameron County, Texas 78550 and may be viewed online at http://www.source-environmental.com/applications/default.htm.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. Comments may also be received if a public meeting is held on the facility. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted prior to the notice of final determination. The executive director is not required to file a response to comments.

EXECUTIVE DIRECTOR ACTION. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to reconsider the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

INFORMATION. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to http://www10.tceq.state.tx.us/epic/ecmnts/. Individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from the City of Harlingen at the address stated above or by calling Dan Serna, Public Works Director, at (956) 216-5301.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201005376
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 15, 2010

♦ ♦ ♦

Notice of Water Quality Applications

The following notice was issued on September 3, 2010 through September 10, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF KENEDY which operates Cottonwood WTP, a reverse osmosis potable water treatment unit, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003913000, which authorizes the discharge of reverse osmosis reject water and filter backwash water at a daily maximum flow not exceed 900,000 gallons per day via Outfall 001. The facility is located at 602 Cottonwood, approximately 1.6 miles southeast of the intersection of U.S. Highway 181 and State Highway 72 in the City of Kenedy, Karnes County, Texas 78119.

THE CITY OF WICHITA FALLS which operates Cypress Water Treatment Plant, has applied for a renewal of TPDES Permit No. WQ0004419000, which authorizes the discharge of reverse osmosis reject water and ultra-filtration/micro-filtration backwash water at a daily maximum flow not to exceed 6,000,000 gallons per day via Outfall 001. The facility is located on the north side of Johnson Road between Barnett Road and Fairway Boulevard, approximately 2100 feet southeast of the intersection of U.S. Highway 82 (Kell Freeway) and Barnett Road, in the southwest section of the City of Wichita Falls, Wichita County, Texas 76307.

SYNAGRO OF TEXAS CDR INC has applied for a new permit, Proposed Texas Commission on Environmental Quality (TCEQ) Permit No. WQ0004887000, to authorize the land application of sewage sludge for beneficial use on 33.6 acres. The anticipated date of the first application of sludge, subject to the issuance of the permit, is December 1, 2010. This permit will not authorize a discharge of pollutants into waters in the State. The previous notices (Notice of Receipt of Application and Intent to Obtain a Beneficial Land Use Permit and the Notice of Application and Preliminary Decision for Land Application Permit of Sewage Sludge) were not published in an alternative language newspaper of general circulation in the county in which the proposed application site is located. This combined notice will be published in the alternative language taught in the bilingual education program of the nearest elementary or middle school. It will be published in a newspaper or publication of general circulation in the county in which the proposed application site is located and that is published primarily in the alternative language. The sewage sludge land application site will be located approximately 7 miles east of Austin Bergstrom International Airport off of Richards Drive, 300 feet south of Highway 71, in Travis County, Texas 78617.

SYNAGRO OF TEXAS CDR INC has applied for a new permit, Proposed TCEQ Permit No. WQ0004888000, to authorize the land appli-

cation of sewage sludge for beneficial use on 137.7 acres. The anticipated date of the first application of sludge, subject to the issuance of the permit, is December 1, 2010. This permit will not authorize a discharge of pollutants into waters in the State. The previous notices (Notice of Receipt of Application and Intent to Obtain a Beneficial Land Use Permit and the Notice of Application and Preliminary Decision for Land Application Permit of Sewage Sludge) were not published in an alternative language newspaper of general circulation in the county in which the proposed application site is located. This combined notice will be published in the alternative language taught in the bilingual education program of the nearest elementary or middle school. It will be published in a newspaper or publication of general circulation in the county in which the proposed application site is located and that is published primarily in the alternative language. The sewage sludge land application site is located approximately seven miles east of Austin Bergstrom International Airport, off of Richards Drive, 300 feet south of Highway 71, in Travis County, Texas 78617.

CITY OF JOURDANTON has applied for a major amendment to TPDES Permit No. WQ0010418001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 330,000 gallons per day to a daily average flow not to exceed 980,000 gallons per day. The facility is located approximately 0.5 mile southwest of the intersection of State Highways 16 and 97 and approximately 1 mile west of the intersection of State Highway 16 and Farm-to-Market Road 1332 in Atascosa County, Texas 78026.

TOWN OF DARROUZETT has applied to the TCEQ for a major amendment to TCEQ Permit No. WQ0010446001 to authorize an increase in the maximum pH limit from 9.0 standard units to 10.0 standard units based on 30 TAC §309.2(c)(2) and to decrease the monitoring frequency of BOD5 from twice per month to once per month based on 30 TAC §319.5(c). The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day via surface irrigation of 21.36 acres of non-public access pastureland which will remain the same. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility is located approximately 2,000 feet south-southwest of the intersection of Interstate Highway 15 and Farm-to-Market Road 2248 and the disposal site is located approximately 500 feet south-southwest of the intersection of Interstate Highway 15 and Farm-to-Market Road 2248 both east of the Town of Darrouzett in Lipscomb County, Texas 79024.

CITY OF WESLACO has applied for a renewal of TPDES Permit No. WQ0010619001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 250,000 gallons per day. The facility is located at the southeast intersection of Farm-to-Market Road 88 and Mile 9 North Road in Hidalgo County, Texas 78596.

TRAVIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT POINT VENTURE has applied for a major amendment to TCEQ Permit No. WQ0011385001, to authorize an increase in the daily average flow from 82,000 gallons per day to 150,000 gallons per day; to increase the acreage irrigated from 48 acres to 53.04 acres of a golf course. The proposed amendment also requests authorization to use 48 acres for surface irrigation of a golf course in the interim phases and 33.576 acres of a golf course for surface irrigation and 19.464 acres of a golf course for subsurface area drip dispersal of effluent in the final phase. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located in the Village of Point Venture approximately 6.5 miles south of the intersection of Farm-to-Market Road 1431 and Lohmans Crossing in Travis County, Texas 78645. The wastewater treatment facility is located adjacent to Venture Drive in the Village of Point Venture between the 1st and 2nd holes of the Point Venture Golf Course, Travis County, Texas 78645.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TCEQ Permit No. WQ0011491001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day via surface irrigation of 15 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located within Lake Arrowhead State Park, approximately 2,000 feet southwest of the intersection of Farm-to-Market Road 2606 and Farm-to-Market Road 1954, approximately 1,000 feet northeast of the Park entrance on Farm-to-Market Road 1954, and approximately 12 miles west-southwest of the City of Henrietta in Clay County, Texas 76310.

CITY OF DRISCOLL has applied for a renewal of TPDES Permit No. WQ0011541001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located northeast of Driscoll, approximately 2,400 feet northeast of the intersection of Farm-to-Market Road 665 and U.S. Highway 77, approximately 2,600 feet southeast of U.S. Highway 77 crossing Petronila Creek in Nueces County, Texas 78351.

BOYS AND GIRLS COUNTRY OF HOUSTON, INC. has applied for a renewal of TPDES Permit No. WQ0011814001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at a point approximately 1.7 miles north of the intersection of U.S. Highway 290 and Roberts Road, approximately 2.0 miles northeast of the City of Hockley in Harris County, Texas 77447.

CITY OF PRESIDIO has applied for a renewal of TPDES Permit No. WQ0014679001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,250,000 gallons per day. The facility will be located approximately 1.5 miles southeast of the City of Presidio on the north side of Farm-to-Market Road 170 in Presidio County, Texas 79845.

ROLLING V RANCH WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 of Wise County has applied for a new permit, proposed TPDES Permit No. WQ0014977001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility will be located approximately 9,500 feet south and 1,850 feet east of the intersection of US 287, Texas 114 and Farm-to-Market-Road 3433 near the City of Rhome in Wise County, Texas 76078. The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 10 DAYS OF THE ISSUED DATE OF THE NOTICE.

EAST CEDAR CREEK FRESH WATER SUPPLY DISTRICT has applied for a minor amendment to the TCEQ Permit No. WQ0013874001 to authorize reduction of the surface irrigation area from 137 acres to 134 acres and the daily average flow from 200,000 gallons per day (gpd) to 196,000 gpd. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 15,700 feet south of the intersection of State Highway 198 and State Highway 334 in Henderson County, Texas 75147.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201005375
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 15, 2010

♦ ♦ ♦

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on September 8, 2010, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Neal Young; SOAH Docket No. 582-10-2835; TCEQ Docket No. 2009-1111-AIR-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Neal Young on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201005377
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 15, 2010

♦ ♦ ♦

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on September 9, 2010, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Federico C. Villarreal dba A-1 Paint and Auto Works; SOAH Docket No. 582-10-1638; TCEQ Docket No. 2009-0942-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Federico C. Villarreal dba A-1 Paint and Auto Works on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201005378
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 15, 2010

♦ ♦ ♦

Texas Facilities Commission

Request for Proposals #303-1-20243

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Public Safety, announces the issuance of Request for Proposals (RFP) #303-1-20243. TFC seeks a five or ten year lease of approximately 5,285 square feet of office space in Northwest Tarrant County, Texas.

The deadline for questions is October 1, 2010, and the deadline for proposals is October 11, 2010, at 3:00 p.m. The target award date is November 17, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Contract Specialist Sandy Williams at (512) 475-0453 or sandy.williams@tfc.state.tx.us. Any addendum to the original RFP will be posted to the Electronic State Business Daily. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=91091.*

TRD-201005362
Kay Molina
General Counsel
Texas Facilities Commission
Filed: September 15, 2010

♦ ♦ ♦

Request for Proposals #303-1-20249

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice, announces the issuance of Request for Proposals (RFP) #303-1-20249. TFC seeks a five or ten year lease of approximately 3,573 square feet of office space in Orange, Texas.

The deadline for questions is October 22, 2010, and the deadline for proposals is November 5, 2010, at 3:00 p.m. The target award date is December 17, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Contract Specialist Sandy Williams at (512) 475-0453 or sandy.williams@tfc.state.tx.us. Any addendum to the original RFP will be posted to the Electronic State Business Daily. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=91088.*

TRD-201005363
Kay Molina
General Counsel
Texas Facilities Commission
Filed: September 15, 2010

♦ ♦ ♦

Texas Forensic Science Commission

Notice of Intent to Seek Consultant Services

In accordance with the provisions of Texas Government Code, Chapter 2254, the Texas Forensic Science Commission ("FSC") is issuing an Invitation for Offers for a consultant ("GC") to provide legal services and legal advice to the FSC that will include but not be limited to the following:

1. Represent and advise the FSC members and staff on legal questions;

2. Work with consultants and FSC members in drafting contracts for services;

3. Work with hotels and the Commission Coordinator ("CC") in drafting contracts and agreements for meeting space and overnight rooms;

4. Serve as the signature authority for all commission activities and agreements;

5. Ensure maintenance of public information act compliance;

6. Ensure maintenance of open meetings act compliance;

7. Act as liaison between different FSC stakeholders;

8. Continue development of policies and procedures protecting the integrity of the FSC and individual investigations;

9. Work with the Legislative Development Committee in the development of legislative initiatives that will advance the use and reliability of forensic science in the Texas criminal justice system;

10. Draft preliminary reports for Investigation Panels as necessary;

11. Coordinate with staff on conducting research for Complaint Screening Committees;

12. Draft reports for Complaint Screening Committees as necessary;

13. Develop initiatives for reporting to Forensic Development Committee;

14. Work with Attorney General's office and CC on PIA requests;

15. Develop an electronic system for expedient delivery of FSC documents responsive to PIA requests;

16. Work with CC on maintaining a list of deadlines for investigations;

17. Delegate and respond to media inquiries;

18. Communicate with FSC members on assignments and activities;

19. Work with CC on maintaining and updating the Complaint Assignment Table;

20. Conduct preliminary investigative activities as assigned by FSC members;

21. Participate in document development as assigned by FSC Chair;

22. Monitor FSC and forensic development articles; and

23. Develop information on the legal side of forensic sciences for use and reference by lawyers and judges on the FSC website.

The consultant selected to provide the above services must have a J.D. from an ABA accredited institution, must be a member of the State Bar of Texas and authorized to practice law in Texas. The consultant must have at least 10 years of experience in litigation, criminal law and forensics or a combination of at least two. The consultant must have knowledge of criminal and State government laws, legal codes, court procedures/precedents, government regulations, agency rules and political processes and a basic medical terminology, including a basic knowledge of forensic science and how it is used in the court room. The consultant must also have a background in development of written policies and procedures and experience in development of legislative initiatives.

An award will be made to the proposer that submits the highest ranked proposal based on evaluation criteria developed by the FSC. As authorized by law, the FSC reserves the right to reject any and all bids. As authorized by law, the FSC reserves the right to select the bidder that, in its judgment, provides the best value. It should be noted that although Sam Houston State University (SHSU) serves as the fiscal agent for the FSC, the consultant selected to provide legal and other services to the FSC will not be an employee of SHSU or represent the interests of SHSU.

Parties interested in a copy of this Invitation for Offers should contact the FSC Office:

Leigh M. Tomlin

Sam Houston State University

College of Criminal Justice

Texas Forensic Science Commission

Box 2296

816 17th Street

Huntsville, Texas 77341

Phone: 1-888-296-4232

Fax: 1-888-305-2432

Email: info@fsc.state.tx.us

The proposal submission deadline will be Monday, October 25, 2010 at 5:00 p.m. Central Prevailing Time.

TRD-201005322
John M. Bradley
Chair
Texas Forensic Science Commission
Filed: September 13, 2010

♦ ♦ ♦

General Land Office

Notice of Violation - Derelict Vessel

Official Notice to Vessel Owner/Operator (Pursuant to §40.254, Texas Natural Resources Code)

This preliminary report and notice of violation was issued by Greg Pollock, Deputy Commissioner, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 9 June 2010.

PRELIMINARY REPORT

Based upon an inspection conducted by Region 1 staff on 25 February 2010, the commissioner of the General Land Office (GLO), Oil Spill Prevention and Response Division, has determined that the ferro cement-hulled sailboat, Vessel Documentation No. Unknown, is in an abandoned, wrecked, and derelict condition without the consent of the commissioner. In addition, the commissioner has determined, pursuant to OSPRA §40.254(b)(2)(B), that the vessel has no intrinsic value. The ferro cement-hulled sailboat is in Adams Bayou in coastal waters. It is located in a waterway between Muddy Water Marina and Sneed's Shipbuilding which is located at 2011 DuPont Dr., Orange, Texas 77630. It is located at Latitude 30 degrees 3.0 minutes 55.9 seconds N, Longitude 93 degrees 44 minutes 49.6 seconds W. Because there is no current registration or identification numbers, the GLO cannot determine the owner of or responsible person(s) for this abandoned vessel. The GLO further determined that, because of the vessel's condition and location, the vessel poses a navigational hazard, an unreasonable threat to public health, safety, and welfare, and a hazard to the environment.

Violation

You are hereby given notice, pursuant to the provisions of §40.254 of the Texas Natural Resources Code (OSPRA), that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in

an actual or threatened unauthorized discharge of oil, a threat to the public health, safety, and welfare, or a hazard to the environment or navigation. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Deputy Commissioner cannot determine the owner or responsible person(s) for the ferro cement-hulled sailboat, Vessel Doc. No. Unknown, and recommends that the commissioner order the abandoned vessel be disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the TGLO. If the TGLO removes and disposes of the vessel, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator.

For additional information, contact Wm. D. "Bill" Grimes at (512) 475-1464.

TRD-201005275
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: September 13, 2010

♦ ♦ ♦

Notice of Violation - Derelict Vessel

Official Notice to Vessel Owner/Operator (Pursuant to §40.254, Texas Natural Resources Code)

This preliminary report and notice of violation was issued by Greg Pollock, Deputy Commissioner, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 17 August 2010.

PRELIMINARY REPORT

Based upon an inspection conducted by OSPR Region 5 staff on 17 August 2010, the Deputy Commissioner of the General Land Office (GLO), Oil Spill Prevention and Response Division, has determined that this steel-hulled barge, USCG Vessel Documentation No. Unknown, is in an abandoned, wrecked, and derelict condition without the consent of the commissioner. This vessel is located in Culver Cut, adjacent to the Mad Island Wildlife Management Area, north of the Gulf Intracoastal Waterway (GIWW) in Matagorda County, Texas. The GLO is unable to determine the owner or responsible person(s) for this vessel. The Commissioner has further determined that, because of the vessel's condition and location, the vessel poses a navigational hazard, an unreasonable threat to public health, safety, and welfare, and is a hazard to the environment.

Violation

You are hereby given notice, pursuant to the provisions of §40.254 of the Texas Natural Resources Code (OSPRA), that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or threatened unauthorized discharge of oil, a threat to the public health, safety, and welfare, or a hazard to the environment or navigation. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Commissioner recommends that the vessel be removed from Texas coastal waters and disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the TGLO. If the TGLO removes and disposes of the vessel, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator.

For additional information, contact Wm. D. "Bill" Grimes at (512) 475-1464.

TRD-201005276
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: September 13, 2010

♦ ♦ ♦

Notice of Violation - Derelict Vessel

Official Notice to Vessel Owner/Operator (Pursuant to §40.254, Texas Natural Resources Code)

This preliminary report and notice of violation was issued by Greg Pollock, Deputy Commissioner, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 11 August 2010.

PRELIMINARY REPORT

Based upon an inspection conducted by OSPR Region 1 staff on 19 March 2010, the Commissioner of the General Land Office (GLO) has determined that three unidentified steel structures are in an abandoned, wrecked, and derelict condition without the consent of the commissioner. The three steel structures appear to be parts of a mobile offshore drilling unit (MODU) and are located in the Sabine-Neches Canal, near the town of Sabine Pass, in Jefferson County, Texas. They are located at Latitude 29 degrees 44 minutes 34.4 seconds N, Longitude 93 degrees 53 minutes 36.2 seconds W. The GLO cannot determine the owner or responsible person(s) for these structures. The Commissioner has further determined that, because of their condition and location, the structures pose a navigational hazard, an unreasonable threat to public health, safety, and welfare, and are a hazard to the environment.

Violation

You are hereby given notice, pursuant to the provisions of §40.254 of the Texas Natural Resources Code (OSPRA), that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or threatened unauthorized discharge of oil, is a threat to the public health, safety, and welfare, or a hazard to the environment or navigation. The Commissioner is authorized by OSPRA §40.108(b)

to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Commissioner recommends that the structures be removed from Texas coastal waters and disposed of in accordance with OSPRA §40.108.

The owner or operator of these structures can request a hearing to contest the violation and the removal and disposal of the structures. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the structures. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the structures by the TGLO. If the TGLO removes and disposes of the structures, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the structures' owner or operator.

For additional information, contact Wm. D. "Bill" Grimes at (512) 475-1464.

TRD-201005327
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: September 13, 2010

♦ ♦ ♦

Notice of Violation - Derelict Vessel

Rig 254

Official Notice to Vessel Owner/Operator (Pursuant to §40.254, Texas Natural Resources Code)

This preliminary report and notice of violation was issued by Greg Pollock, Deputy Commissioner, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 30 August 2010.

PRELIMINARY REPORT

Based upon an inspection conducted by OSPR Region 1 staff on 7 May 2010, the Deputy Commissioner of the General Land Office (GLO), Oil Spill Prevention and Response Division, has determined that a steel-hulled commercial fishing vessel, USCG Documentation Number and name unknown, is submerged in approximately 30 foot of water, and is in an abandoned, wrecked, and derelict condition without the consent of the commissioner. The steel-hulled vessel, approximately 75-85 feet in length, is located on the Sabine Neches Canal, near the town of Sabine Pass, Texas, in Jefferson County, Texas. It is located at Latitude 29 degrees 44 minutes 43.0 seconds N, Longitude 93 degrees 53 minutes 33.0 seconds W. The GLO cannot determine the owner of or responsible person(s) for this abandoned vessel. The GLO further determined that, because of the vessel's condition, the vessel poses an unreasonable threat to public health, safety, and welfare, a hazard to the environment, and a threat to navigation.

Violation

You are hereby given notice, pursuant to the provisions of §40.254 of the Texas Natural Resources Code (OSPRA) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or threatened unauthorized discharge of oil, is a threat to the public health, safety, and welfare, or a hazard to the environment or navigation. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Commissioner recommends that the structures be removed from Texas coastal waters and disposed of in accordance with OSPRA §40.108.

The owner or operator of these structures can request a hearing to contest the violation and the removal and disposal of the structures. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the structures. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the structures by the TGLO. If the TGLO removes and disposes of the structures, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the structures' owner or operator.

For additional information, contact Wm. D. "Bill" Grimes at (512) 475-1464.

TRD-201005329
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: September 13, 2010

♦ ♦ ♦

Notice of Violation - Derelict Vessel

Official Notice to Vessel Owner/Operator (Pursuant to §40.254, Texas Natural Resources Code)

This preliminary report and notice of violation was issued by Greg Pollock, Deputy Commissioner, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 2 August 2010.

PRELIMINARY REPORT

Based upon an inspection conducted by Region 5 staff on 4 November 2008, the Deputy Commissioner of the General Land Office (GLO), Oil Spill Prevention and Response Division, has determined that the 45' home-made, steel-hulled sailing vessel "Antares" (GLO Vessel 671), USCG Vessel Documentation No. Unknown, is in an abandoned, wrecked, and derelict condition without the consent of the commissioner. The vessel is located in the diversion channel of the Colorado River in Matagorda County, Texas. It is located at Latitude 28 degrees 39 minutes 7 seconds N, Longitude 95 degrees 59 minutes 15 seconds W. The GLO has determined that Wayland D. Wilmoth of Matagorda, Texas is the owner, but he cannot be located. The GLO further determined that, because of the vessel's condition and location, the vessel poses a navigational hazard, an unreasonable threat to public health, safety, and welfare, and a hazard to the environment.

Violation

You are hereby given notice, pursuant to the provisions of §40.254 of the Texas Natural Resources Code (OSPRA), that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or threatened unauthorized discharge of oil, a threat to the public health, safety, and welfare, or a hazard to the environment or

navigation. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Deputy Commissioner cannot determine the owner or responsible person(s) for the steel-hulled sailboat "Antares" (GLO Vessel 671), and recommends that the commissioner order the abandoned vessel be disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the TGLO. If the TGLO removes and disposes of the vessel, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator.

For additional information, contact Wm. D. "Bill" Grimes at (512) 475-1464.

TRD-201005331
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: September 13, 2010

Notice of Violation - Derelict Vessel

Official Notice to Vessel Owner/Operator (Pursuant to §40.254, Texas Natural Resources Code)

This preliminary report and notice of violation was issued by Greg Pollock, Deputy Commissioner, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 5 August 2010.

PRELIMINARY REPORT

Based upon an inspection conducted by OSPR Region 1 staff on 3 August 2010, the Deputy Commissioner of the General Land Office (GLO), Oil Spill Prevention and Response Division, has determined that a 60' wood-hulled (GLO Vessel #317), USCG Vessel Documentation No. Unknown, is in an abandoned, wrecked, and derelict condition without the consent of the commissioner. The vessel is located in the Sabine River at the old Jack Tar Orange House Hotel dock, in the City of Orange, in Orange County, Texas. It is located at Latitude 30 degrees 05 minutes 20 seconds N, Longitude 93 degrees 43 minutes 2.0 seconds W. The GLO is unable to determine the owner or responsible person(s) for this vessel and, pursuant to the provisions of §40.254 of the Texas Natural Resources Code (OSPRA), has determined that the vessel has no intrinsic value. The Commissioner has further determined that, because of the vessel's condition and location, the vessel poses a navigational hazard, an unreasonable threat to public health, safety, and welfare, and is a hazard to the environment.

Violation

You are hereby given notice, pursuant to the provisions of OSPRA §40.254 that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or threatened unauthorized discharge of oil, a threat to public health, safety, and welfare, or a hazard to the environment or navigation. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Deputy Commissioner recommends that the vessel be removed from Texas coastal waters and disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the TGLO. If the TGLO removes and disposes of the vessel, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator.

For additional information, contact Wm. D. "Bill" Grimes at (512) 475-1464.

TRD-201005332
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: September 13, 2010

♦ ♦ ♦

Notice of Violation - Derelict Vessels

Ingleside Barges

Official Notice to Vessel Owner/Operator (Pursuant to §40.254, Texas Natural Resources Code)

PRELIMINARY REPORT

Based upon an inspection conducted by Region 3 staff on 1 June 2010, the Commissioner of the General Land Office (GLO) has determined that the steel-hulled barges listed below, Vessel Documentation Nos. Unknown, are in an abandoned, wrecked, and derelict condition in San Patricio County and are a threat to public health, safety, and welfare.

Because there is no current registration or identification numbers, the GLO is unable to determine the owners of or responsible person(s) for these abandoned vessels.

VESSELS:

505 - Description: Deck Barge; Location: Lat: 27.884722; Long: -97.146944; GIWW - Redfish Bay - Old COE Barge

509 - Description: Barge; Location: Lat: 27.858333 Long: -97.167778; GIWW - Redfish Bay - Superior Crude Dock

510 - Description: Barge; Location: Lat: 27.851111 Long: -97.172222; GIWW - Redfish Bay - Garrett Dock

511 - Description: Barge; Location: Lat: 27.851111 Long: -97.172222; GIWW - Redfish Bay - Garrett Dock

513 - Description: Barge; Location: Lat: 27.861667 Long: -97.166389; GIWW - Redfish Bay - Alamo Concrete

514 - Description: Barge; Location: Lat: 27.861667 Long: -97.166389; GIWW - Redfish Bay - Alamo Concrete

797 - Description: Barge; Location: Lat: 27.882778 Long: -97.146944; GIWW - Redfish Bay

806 - Description: Barge; Location: Lat: 27.882778 Long: -97.146944; GIWW - Redfish Bay

807 - Description: Barge; Location: Lat: 27.882778 Long: -97.146389; GIWW - Redfish Bay

808 - Description: Barge; Location: Lat: 27.882728 Long: -97.146389; GIWW - Redfish Bay

809 - Description: Barge; Location: Lat: 27.883611 Long: -97.146944; GIWW - Redfish Bay

810 - Description: Barge; Location: Lat: 27.883611 Long: -97.146944; GIWW - Redfish Bay

811 - Description: Barge; Location: Lat: 27.883889 Long: -97.147222; GIWW - Redfish Bay

937 - Description: Barge; Location: Lat: 27.885278 Long: -97.146944; GIWW - Redfish Bay

938 - Description: Barge; Location: Lat: 27.861944 Long: -97.166944; GIWW - Redfish Bay - Alamo Concrete

Violation

You are hereby given notice, pursuant to the provisions of §40.254 of the Texas Natural Resources Code (OSPRA), that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is a threat to the public health, safety, and welfare. The commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Commissioner recommends that the vessels be removed from Texas coastal waters and disposed of in accordance with OSPRA §40.108.

The owner or operator of these vessels can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the TGLO. If the TGLO removes and disposes of the vessel, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator.

For additional information, contact Wm. D. "Bill" Grimes at (512) 475-1464.

This preliminary report and notice of violation was issued by Greg Pollock, Deputy Commissioner, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 19 July 2010.

TRD-201005330
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: September 13, 2010

♦ ♦ ♦

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on October 12, 2010, at 9:00 a.m. to receive public comment on proposed rates for Hospice routine home, continuous home, inpatient respite, and general inpatient care. The Medicaid Hospice program is operated by the Texas Department of Aging and Disability Services (DADS). The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Texas Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Esther Brown by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Briefing Package. A briefing package describing the proposed payment rates will be available on September 27, 2010. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Esther Brown by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at Esther.Brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Esther Brown, Texas Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Esther Brown at (512) 491-1998; or by e-mail to Esther.Brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Esther Brown, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201005256
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: September 10, 2010

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services a request for an amendment to the Youth Empowerment Services (YES) waiver program, under the authority of §1915(c) of the Social Security Act. The YES waiver program is currently approved for the three-year period beginning April 1, 2010, and ending March 31, 2013. The proposed effective date for the amendment is April 1, 2010.

The program is designed to provide community-based services to children with severe emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families. The waiver program serves up to an estimated 300 youth at any given time who are under age 19 and who are predicted to remain in the waiver program for 12 months. The waiver is limited to individuals residing in Bexar County and Travis County.

The purpose of this amendment is to revise service descriptions to match current standards of practice for respite, adaptive aids and supports, and professional services. Revised provider qualifications will increase the number of qualified providers and therefore increase the number of individuals served under the YES waiver for respite,

adaptive aids and supports, community living supports, family supports, non-medical transportation, paraprofessional, professional and supportive family-based alternatives. HHSC will seek to revise the services included under a $5,000 annual limit. The revision will reduce the number of services this limit is applied to and will only include minor home modifications and adaptive aids and supports. Previously this limit also included professional services, paraprofessional services, and non-medical transportation.

HHSC is requesting that the waiver amendment be approved for the period beginning April 1, 2010, through March 31, 2013. This amendment maintains cost effectiveness for waiver years 2010 through 2013.

To obtain copies of the proposed waiver amendment, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1957, or by e-mail at Christine.Longoria@hhsc.state.tx.us.

TRD-201005283
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: September 13, 2010

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces it has submitted Transmittal Number 10-002, Amendment Number 895, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The amendment added a new optional Medicaid coverage group for children with disabilities who are under age 19, under the Family Opportunity Act. The newly adopted group is based on a family income standard that is less than 300 percent of the Federal Poverty Level. Families have the option to buy in to Medicaid coverage for eligible children by paying monthly premiums. The amendment will become effective January 1, 2011.

The amendment was submitted to the Centers for Medicare and Medicaid Services (CMS) on February 26, 2010, and subsequently approved on May 27, 2010.

The amendment is estimated to result in an additional annual aggregate expenditure of $32,496,876 for federal fiscal year (FFY) 2011, consisting of $19,680,108 in federal funds and $12,816,768 in state general revenue. For FFY 2012, the estimated additional annual expenditure is $94,426,920 consisting of $57,184,943 in federal funds and $37,241,977 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Ashley Fox, State Plan Coordinator, by mail at P.O. Box 85200, Mail Code H-200; by telephone at (512) 491-1165; by facsimile at (512) 491-1953; or by e-mail at Ashley.Fox@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201005342
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: September 14, 2010

♦ ♦ ♦

Department of State Health Services

Maximum Fees Allowed for Providing Health Care Information Effective September 24, 2010

The Department of State Health Services licenses general and special hospitals in accordance with Health and Safety Code, Chapter 241. In 1995, the Texas Legislature amended the law to address the release and confidentiality of health care information. In 2009, the Texas Legislature amended the law to change the definition of health care information and to add a category of fees for records provided on and delivered in a digital or other electronic media.

In accordance with Health and Safety Code, §241.154(e), the fee for providing a patient's health care information has been adjusted by 1.6% to reflect the most recent changes to the consumer price index as published by the Bureau of Labor Statistics of the United States Department of Labor. The Bureau of Labor Statistics measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers.

Health and Safety Code, §241.154(b) - (d):

(b) Except as provided by Subsection (d), the hospital or its agent may charge a reasonable fee for providing the health care information except payment information and is not required to permit the examination, copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of copies and which may not exceed $42.05; and

(A) a charge for each page of:

(i) $1.41 for the 11th through the 60th page of provided copies;

(ii) $.70 for the 61st through the 400th page of provided copies;

(iii) $.37 for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies;

(2) if the requested records are stored on microform, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $64.07; and

(A) $1.41 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(3) if the requested records are provided on a digital or other electronic medium and the requesting party requests delivery in a digital or electronic medium, including electronic mail:

(A) a retrieval or processing fee, which may not exceed $76.20; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(c) In addition, the hospital or its agent may charge a reasonable fee for:

(1) execution of an affidavit or certification of a document, not to exceed the charge authorized by Civil Practice and Remedies Code, §22.004; and

(2) written responses to a written set of questions, not to exceed $10 for a set.

(d) A hospital may not charge a fee for:

(1) providing health care information under Subsection (b) to the extent the fee is prohibited under Health and Safety Code, Chapter 161, Subchapter M;

(2) a patient to examine the patient's own health care information;

(3) providing an itemized statement of billed services to a patient or third-party payer, except as provided under §311.002(f); or

(4) health care information relating to treatment or hospitalization for which workers' compensation benefits are being sought, except to the extent permitted under Labor Code, Chapter 408.

This information is provided only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that fees for health care information are charged in accordance with Health and Safety Code, Chapters 241, 311, and 324.

The statutes referenced in this notice may be found on the Internet at:

Health and Safety Code, http://www.statutes.legis.state.tx.us?link=HS

Labor Code, http://www.statutes.legis.state.tx.us?link=LA

Civil Practice and Remedies Code, http://www.statutes.legis.state.tx.us?link=CP

If you have questions, you may contact the Department of State Health Services, Facility Licensing Group, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 834-6648.

TRD-201005370
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: September 15, 2010

♦ ♦ ♦

Texas Department of Housing and Community Affairs

2010 HOME Single Family Programs Notice of Funding Availability

(1) Summary. The Texas Department of Housing and Community Affairs (the "Department") announces the availability of approximately $31,212,551 in funding from the HOME Investment Partnerships Program (HOME) for single family housing programs. The availability and use of these funds is subject to the State HOME Rules at 10 Texas Administrative Code (TAC) Chapter 53 ("HOME Rules") in effect at the time the Single Family or Reservation System Participation application is submitted, the federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306 of the Texas Government Code. Other federal regulations apply, including but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, 24 CFR §84.42 and §85.36 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

(2) Allocation of HOME Funds.

(a) The funds are made available through the Department's allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). These HOME funds have been programmed for single family housing assistance programs in accordance with the 2010 State of Texas Consolidated Plan One-Year Action Plan as follows. Balances available for each region and set-aside will be maintained by the Department and can be accessed at www.tdhca.state.tx.us.

(i) Homeowner Rehabilitation Assistance (HRA). $16,232,107 in funds is available for HRA, of which at least $1,000,000 will be available solely through the Reservation System. HRA provides funds for the rehabilitation or demolition and reconstruction of single-family residences owned and occupied by low-income households. Specific program guidelines can be found at 10 TAC §§53.30 - 53.32.

(ii) Homebuyer Assistance (HBA). $3,478,309 is available for HBA, of which at least $1,000,000 will be available solely through the Reservation System. HBA provides downpayment and closing cost assistance to low-income households. Additionally, assistance may be provided for accessibility modifications, if required. Specific program guidelines can be found at 10 TAC §§53.40 - 53.42.

(iii) Tenant Based Rental Assistance (TBRA). $3,478,309 in funds is available for TBRA, of which at least $1,000,000 will be available solely through the Reservation System TBRA provides rental subsidies to low-income households and may include deposits and utility deposits. Specific program guidelines can be found at 10 TAC §§53.60 - 53.62.

(iv) Persons with Disabilities Set-Aside. $2,844,135 in funding is set-aside to assist Persons with Disabilities with TBRA or HBA. $1,247,641 is reserved for use in any area of the state including within other Participating Jurisdictions, of which at least $623,820 will be available only through the Reservation System. $1,596,494 is reserved for use only in Non-Participating Jurisdictions (Non-PJ) areas and will be available only through the Reservation System.

(v) Contract for Deed Conversion (CFDC). $2,000,000 in funding is set-aside for CFDC, which will be available solely through the Reservation System. CFDC provides funds to convert contracts for deed in colonias to warranty deeds. Additionally, assistance may be provided to rehabilitate or reconstruct the housing unit. Specific program guidelines can be found at 10 TAC §§53.50 - 53.52.

(vi) Disaster Relief. $2,179,691 of Deobligated funds is set-aside for Disaster Relief and available solely through the Reservation System. Disaster Relief Assistance may be provided to eligible applicants who provide HRA, HBA, or TBRA assistance to victims of a natural disaster.

(vii) Rehabilitation with Refinance. At least $1,000,000 in projected program income, as available, in accordance with the 2010 Consolidated Plan One-Year Action Plan (OYAP) is available for Rehabilitation with Refinance and available solely through the Reservation System. Currently, approximately $300,000 in program income is being made available and additional program income will be added when received throughout the year. Homeowner Rehabilitation with Refinance provides assistance to homeowners for the rehabilitation or reconstruction of their home and the refinance of an existing mortgage to ensure affordability. Specific program guidelines can be found at 10 TAC §§53.30 - 53.32.

(b) Reservations of Funds or Applications for Contract Awards will be accepted by the Department on an on-going basis until 5:00 p.m. Friday, April 29, 2011.

(c) Any funds under the HRA, HBA, TBRA or Rehabilitation with Refinancing set-asides that have been requested or reserved prior to 5:00 p.m. Tuesday, November 30, 2010 are subject to the Regional Allocation Formula (RAF). The Contract for Deed Conversion, Persons with Disabilities, and Disaster Relief set-asides are not subject regional allocation.

(d) On Wednesday, December 1, 2010, any funds which have not been requested or reserved under §(2)(b) of this NOFA will collapse and be made available in any region and subregion. Funds will remain within each set-aside. Applications and Reservations of Funds submitted under this subsection will be accepted by the Department on an on-going

basis until 5:00 p.m. Friday, January 7, 2011, regardless of method of delivery.

(e) After Friday, January 7, 2011, staff may reprogram all remaining funds, except for Persons with Disabilities set-aside funds available for use in PJs, to Program Activities with higher demand for funds. Additionally, at any time after this date funds may be redirected and made available under the Reservation System to satisfy excess demand.

(3) Eligible and Prohibited Activities.

(a) Prohibited activities include those at 24 CFR §92.214 and 10 TAC Chapter 53.

(b) Funds will not be eligible for use in a Participating Jurisdiction (PJ) except for Applications receiving funds under the Persons with Disabilities Set-Aside and designated for use in a PJ.

(c) Eligible Applicants are Units of General Local Government, Nonprofit Organizations, and Public Housing Authorities.

(4) Application Threshold Requirements.

(a) Threshold Criteria. Threshold criteria in 10 TAC Chapter 53 are mandatory requirements at the time of application submission, unless specifically indicated otherwise, and will be included in the written agreement if funds are awarded.

(b) Threshold Score. In addition to the threshold requirements of 10 TAC §53.24, the applications for Contract Awards must meet the minimum threshold score of four (4). This score is tallied using points from the following categories:

(i) Additional Eligible Match: In addition to the threshold match requirement in 10 TAC Chapter 53, the Applicant can receive one (1) point for each percentage of additional match.

(ii) Very Low Income Targeting. Table 1 will be used to determine very low income targeting points awarded, as follows:

Table 1

Income Target	Points	Points (HBA only)
At least 25% of units at 60% AMFI (50% for TBRA)	1	4
At least 50% of units at 60% AMFI (50% for TBRA)	2	
At least 75% of units at 60% AMFI (50% for TBRA)	3	

(iii) Extremely Low Income Targeting. Table 2 will be used to determine extremely low income targeting points awarded, as follows:

Table 2

Income Target	Points
At least 25% of units at 30% AMFI	2
At least 50% of units at 30% AMFI	3
At least 75% of units at 30% AMFI	4

(5) Reservation System Applications.

(a) Applicants may apply at any time to participate in the Reservation System.

(b) Applicants applying for Contract Awards may concurrently apply to become Reservation System Participants.

(6) Application Submission.

(a) All applications submitted under this NOFA must be received on or before 5:00 p.m. Friday, April 29, 2011, regardless of method of delivery. The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays, from the date this NOFA is published in the *Texas Register* until the deadline date. For questions regarding this NOFA, please contact the HOME Division at (512) 463-8921 or via e-mail at HOME@tdhca.state.tx.us.

(b) All applications must be submitted and documentation provided as described in 10 TAC Chapter 53 and the Application Submission Procedures Manual (ASPM).

(c) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

(d) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. The Application fee is not an allowable or reimbursable cost under the HOME Program. An Applicant that is a Nonprofit Organization may request a fee waiver in accordance with §2306.147(b) of the Texas Government Code.

(e) This NOFA does not include text of the various applicable regulatory provisions pertinent to the HOME Program. For proper completion of the application, the Department strongly encourages potential

applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.

(f) Applications must be sent via overnight delivery to:

Texas Department of Housing and Community Affairs

HOME Division

221 East 11th Street

Austin, Texas 78701-2410

Or via the U.S. Postal Service to:

Texas Department of Housing and Community Affairs

HOME Division

P.O. Box 13941

Austin, Texas 78711-3941

TRD-201005349
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 14, 2010

♦ ♦ ♦

Multifamily Development Program Notice of Funding Availability

(I) Summary. The Texas Department of Housing and Community Affairs (the "Department") announces the availability of up to $18,218,765 in funding from the HOME Investment Partnerships Program for the development of affordable multifamily rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at 10 Texas Administrative Code (TAC) Chapter 53 ("HOME Rules") in effect at the time Application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306 of the Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §84.42 and §85.36 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

(II) Allocation of HOME Funds.

(a) These funds are made available through the Department's allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). These HOME funds have been programmed for Multifamily Development activities involving acquisition and new construction or acquisition and rehabilitation of affordable housing. The funds made available under this NOFA are subject to the following set-asides.

(i) Community Housing Development Organization (CHDO) Set-Aside. At least $6,539,074 in funds are set-aside to eligible CHDOs meeting the requirements of 10 TAC §53.90 and this NOFA.

(ii) Persons with Disabilities Set-Aside. $1,179,691 in funds are set-aside to fund Applications proposing all of their HOME units to be restricted for persons with disabilities and are subject to the Department's Integrated Housing Rule at 10 TAC §1.15. Funds requested and awarded under this set-aside may be located in any area of the state including within other Participating Jurisdictions. Funds requested and awarded under this set-aside are subject to a $500,000 per Application funding limit.

(iii) General Set-Aside. The remaining $10,500,000 in funds shall be available to all other Applications proposing Multifamily Development that meet the requirements of this NOFA, the HOME Program Rule, and the Federal HOME regulations. Of these funds, $5,000,000 is made available from the 2010 allocation, $3,500,000 made available from the Department's balance of funds available for programming and $2,000,000 in projected program income, as available, in accordance with the 2010 Consolidated Plan One-Year Action Plan (OYAP). Currently, approximately $500,000 in program income is being made available and additional program income will be added when received throughout the year. Of the funds made available, only the $3,500,000 in funds from the Department's balance of funds available for programming is not subject to the Regional Allocation Formula (RAF); the remaining funds are regionally allocated.

(iv) An Applicant may have only one active Application at a time and may only apply under one set-aside at a time. Additionally, the following processes will be followed for the review and award of Applications:

(1) Once all funds from the CHDO Set-Aside have been awarded, all pending Applications remaining in this set-aside will be considered for funds under the General Set-Aside;

(2) Once all funds from the Persons with Disabilities Set-Aside have been awarded, pending Applications under this set-aside must reapply to be considered under the General or other set-asides due to the different statutory and NOFA requirements for these Applications; and

(3) The Department may complete the CHDO Certification process for Applications that originally applied under the CHDO Set-Aside but receiving funds from the General Set-Aside in order to meet the Department's future obligations to award funds for CHDO activities.

(b) This NOFA will be conducted as an open Application cycle and funding will be available on a first-come, first-served basis. Applications for funds under the CHDO or General Set-Asides, submitted prior to 5:00 p.m. on November 30, 2010 are subject to the Regional Allocation Formula (RAF). The RAF tables for each set-aside can be accessed at www.tdhca.state.tx.us. Funds under the Persons with Disabilities Set-Aside are not subject to regional allocation.

(c) Based on the availability of funds, Applications for the statewide open Application cycle will be accepted until 5:00 p.m. April 29, 2011. Project funds awards are limited to no more than $2,000,000 per Application except for Applications receiving funds from the Persons with Disabilities set-aside as provided in §(II)(a)(ii) of this NOFA.

(d) Each CHDO that is awarded HOME funds may also be eligible to receive a grant for CHDO Operating Expenses.

(e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $15,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program.

(III) Eligible and Prohibited Activities.

(a) Prohibited activities include those at 24 CFR §92.214 and 10 TAC Chapter 53.

(b) Multifamily Development funds will not be eligible for use in a Participating Jurisdiction (PJ) except for Applications receiving funds under the Persons with Disabilities Set-Aside.

(IV) Site and Development Restrictions. In addition to the requirements in 10 TAC Chapters 53 and 60, Developments must meet the requirements at 10 TAC §50.6 of the Qualified Allocation Plan and Rules apply, except for subsections (d), (f), (g), (h), and (k).

(V) Public Notification Requirements. Applicants must request at least fourteen (14) days prior to submission of an Application and submit with the Application a list of Neighborhood Organizations on record with the county and state in accordance with 10 TAC §50.9(h)(8)(A)(i). The Department shall publicly notify all individuals and entities required by §2306.1114 of Texas Government Code.

(VI) Application and Threshold Criteria. An Application must be compliant with the Threshold requirements in 10 TAC §53.24 and §53.80 and the Threshold Criteria listed in this section at the time of Application submission unless specifically indicated otherwise. In addition, an Application must be consistent with the Program and Administrative requirements in 10 TAC Chapter 53.

(a) Affirmative Marketing. Documentation of compliance with the Affirmative Marketing requirements in the Fair Housing Act and the Department's Compliance Rules at 10 TAC §60.112(d). Applicants will be required to use HUD form 935.2a to meet these requirements.

(b) Application Certifications. All Applicants will be required to certify to compliance with the following:

(i) Davis-Bacon Act (24 CFR §92.354);

(ii) Environmental standards (24 CFR Parts 50 and 58);

(iii) Uniform Relocation Act (49 CFR Part 24);

(iv) Lead Safe Housing Rule (24 CFR Part 35);

(v) Other certifications may be required as specifically stated in the ASPM current at the time of Application; and

(vi) Audit Certification. An Applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of Application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the Application deadline for funds or other assistance per 10 TAC §1.3(b).

(c) CHDO Certification. Requirements under this subsection must only be met for Applications considered for an award of funds from the CHDO Set-Aside. CHDO Certification will be awarded in accordance with the rules and procedures as set forth by 10 TAC §53.90, Community Housing Development Organization (CHDO) Certification.

(VII) Tie Breaker Factors. In the event that two or more Applications receive the same priority based upon the provisions of this NOFA in any given Set-Aside category and are both practicable and economically feasible, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive a preference in consideration for an awarded of funds.

(a) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction or Adaptive Reuse.

(b) The Application with the least amount of HOME funds per HOME restricted unit will win this second tier tie breaker.

(VIII) Application Submission.

(a) All Applications submitted under this NOFA must be received on or before 5:00 p.m. Friday, April 29, 2011. The Department will accept Applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays from the date this NOFA is published in the *Texas Register* until the deadline date. For questions regarding this NOFA, please contact the HOME Division at (512) 463-8921 or via e-mail at HOME@tdhca.state.tx.us.

(b) If an Application is submitted to the Department that requests funds from two separate housing finance programs, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

(c) All Applications must be submitted, and provide all documentation, as described in this NOFA and associated Application materials.

(d) Applicants must submit the Application materials as detailed in the ASPM in effect at the time the Application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the ASPM in effect at the time the Application is submitted.

(e) The Application consists of several parts as described in the ASPM. A complete Application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete Applications or improperly compiled Applications will not be accepted. Applicants must submit the Application materials as detailed in the ASPM in effect at the time the Application is submitted.

(f) Third Party Reports. If all applicable third party reports are not received at the time of Application submission, the Application will be terminated.

(g) If a Development has an existing Housing Tax Credit allocation or HOME contract with the Department and construction on the development has not begun, an abbreviated Application for a HOME award or for an increase in the existing HOME award can be submitted under this NOFA. If additional funds are sought, such an Application may also request that the terms for the additional HOME funds also apply for the funds in an existing HOME Contract. The entire amount of HOME funds received from the Department may not exceed the maximum award per development as reflected in this NOFA for the respective set-aside. An Application qualifying for the abbreviated Application process may be considered by staff to have already met the threshold requirements in §(VI) of this NOFA without additional review unless staff determines additional documentation is required in accordance with §(VIII)(h) of this NOFA.

(h) The requirements of the abbreviated Application will be reflected in the Application Submission Procedures Manual (ASPM). In addition to the Application requirements in the ASPM, staff may use discretion to determine if additional information that is typically required in the full Application (including third party reports) is necessary or prudent in order to review for compliance with state or federal rules or due to changes in the market since last reviewed by the Department. Full Application and an amendment may be required for any Application that includes changes to the previous Board approved Application beyond those that are directly related to the development costs, financing structure or additional HOME program related requirements or that affect an existing allocation of Housing Tax Credits.

(i) All Application materials including manuals, NOFAs, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

(j) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive ser-

vices in lieu of the Application fee. An Application fee is not required for Applications submitted pursuant to §(VIII)(g) of this NOFA and that have an existing HOME Contract with the Department. The Application fee is not a reimbursable cost under the HOME Program.

(k) This NOFA does not include text of the various applicable regulatory provisions pertinent to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.

(l) Applications must be sent via overnight delivery to:

HOME Program Division

Texas Department of Housing and Community Affairs

Attention: Chris Law

221 East 11th Street

Austin, Texas 78701-2410

or via the U.S. Postal Service to:

HOME Program Division

Texas Department of Housing and Community Affairs

Attention: Chris Law

Post Office Box 13941

Austin, Texas 78711-3941

TRD-201005351
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 14, 2010

♦ ♦ ♦

PY 2010 Weatherization Assistance Program and the Comprehensive Energy Assistance Program Request for Applications

(I) Request for Applications (RFA). The Texas Department of Housing and Community Affairs (the "Department") is soliciting eligible organizations to administer the Community Services Block Grant, the Weatherization Assistance Program (WAP), and the Comprehensive Energy Assistance Program operations providing services and assistance to the eligible low-income population in Duval County.

(II) The initial grant period for each program is as follows:

(a) Community Services Block Grant (CSBG): from contract initiation through December 31, 2010. Contracts will be renewed annually.

(b) American Recovery and Reinvestment Act Weatherization Assistance Program (ARRA WAP): from contract initiation through August 31, 2011. Contracts may be extended beyond this date, but in no event will any Contract for ARRA WAP funds terminate later than March 31, 2012.

(c) Department of Energy Weatherization Assistance Program (DOE WAP) and Low-Income Home Energy Assistance Program Weatherization Assistance Program (LIHEAP WAP): from contract initiation through March 31, 2011. Contracts will be renewed annually.

(d) Comprehensive Energy Assistance Program (CEAP): from contract initiation through December 31, 2010. Contracts will be renewed annually.

(III) Applicant Eligibility. Organizations eligible to apply for designation as the eligible entity(ies) to serve the identified unserved group of counties must be a private non-profit organization or a political subdivision of the State. **Organizations that currently administer WAP and CEAP funds shall receive priority consideration over all other applicants for the administration of all three programs (CSBG, WAP and CEAP).**

(IV) Application Deadline and Availability. The Request for Applications is posted on the Department's website: http://www.tdhca.state.tx.us/ea/index.htm and organizations on the Department's Listserv will receive an email notification that the RFA is available on the Department's web site.

(V) Deadline for Receipt. The original and one (1) complete copy of your organization's proposal submission shall be provided to the Department by **5:00 p.m. on October 29, 2010,** regardless of method of delivery.

(VI) Mailing Address:

Mr. Michael DeYoung, Director

Community Affairs Division

Texas Department of Housing and Community Affairs

P.O. Box 13941

Austin, Texas 78711-3941

(All U.S. Postal Service including Express)

Courier Delivery:

221 East 11th Street, 1st Floor

Austin, Texas 78701

(FedEx, UPS, Overnight, etc.)

(VII) Hand Delivery. If you are hand delivering the application, contact Sharon Gamble at (512) 475-0471 or Marcella Perry at (512) 475-3913 when you arrive at the lobby of our building.

(VIII) Questions. Questions pertaining to the PY 2010 Community Services Block Grant, Weatherization Assistance Program and the Comprehensive Energy Assistance Program Request for Applications may be directed to Sharon Gamble at (512) 475-0471 or by email at sharon.gamble@tdhca.state.tx.us.

TRD-201005348
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 14, 2010

♦ ♦ ♦

Single Family Development Program for Community Housing Development Organizations Notice of Funding Availability

(1) Summary. The Texas Department of Housing and Community Affairs (the "Department") announces the availability of approximately $3,024,189 in funding from the HOME Investment Partnerships Program for Community Housing Development Organizations (CHDOs) to develop new and rehabilitate existing single family housing for low-income Texans. The availability and use of these funds is subject to the Department's HOME Program Rule at 10 Texas Administrative Code (TAC) Chapter 53 ("HOME Rules") in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306 of the Texas Government Code. Other federal regulations may also apply such as, but not limited

to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

(2) Allocation of HOME Funds.

(a) These funds are made available through the Department's allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). The program is designed to create housing options affordable to individuals and families of low income who would otherwise move into substandard housing. All funds released under this NOFA are to be used for the creation of affordable housing for low-income Texans earning 60% or less of the Area Median Family Income (AMFI).

(b) In accordance with 10 TAC §53.20, this NOFA will be conducted as an open application cycle and funding will be available on a first-come, first-served basis. Funding made available under this NOFA is not subject to the Regional Allocation Formula (RAF). Based on the availability of funds, applications will be accepted until 5:00 p.m. on December 3, 2010.

(c) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC Chapter 53. Project funds awards are limited to no more than $1 million per application and per CHDO.

(d) Each CHDO that is awarded HOME funds may also be eligible to receive a grant for CHDO Operating Expenses, which are defined in 24 CFR §92.208 as including salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials, and supplies.

(3) Eligible and Prohibited Activities.

(a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205 and §92.254 and at 10 TAC §§53.70 - 53.72, which involve the construction of single family affordable housing.

(b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214.

(c) Development funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the State of Texas Consolidated Plan One-Year Action Plan.

(4) Eligible and Ineligible Applicants. Eligible Applicants are CHDOs that meet the requirements of 10 TAC §53.90 at the time of application and recertify annually in accordance with 10 TAC §53.91.

(5) Public Notifications. Applicants must request at least fourteen (14) days prior to submission of an Application and submit with the Application a list of Neighborhood Organizations on record with the county and state in accordance with 10 TAC §50.9(h)(8)(A)(i). The Department shall publicly notify all individuals and entities required by §2306.1114 of Texas Government Code.

(6) Application and Threshold Criteria. An Application must be compliant with the Threshold requirements in 10 TAC §53.24 and §53.70 and the Threshold Criteria listed in this section at the time of Application submission unless specifically indicated otherwise. In addition, an Application must be consistent with the Program and Administrative requirements in 10 TAC Chapter 53.

(a) Financing Documentation. A written narrative describing the financing plan for the units including the funding sources for the construction of the units. Bona fide commitment letters or term sheets for all sources of construction financing must be provided. If other sources of down payment assistance are proposed, commitment letters evidencing these sources must be provided;

(b) Application Certifications. All Applicants may be required to certify to compliance with the following:

(i) Affirmative Marketing (24 CFR §92.351);

(ii) Davis-Bacon Act (24 CFR §92.354);

(iii) Environmental standards (24 CFR Parts 50 and 58);

(iv) Uniform Relocation Act (49 CFR Part 24); and

(v) Lead Safe Housing Rule (24 CFR Part 35).

(vi) Other certifications may be required as specifically stated in the ASPM current at the time of Application.

(vii) Audit Certification. An Applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of Application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the Application deadline for funds or other assistance per 10 TAC §1.3(b).

(c) CHDO Certification. CHDO Certification will be awarded in accordance with the rules and procedures as set forth in the HOME rules at 10 TAC §53.90, Community Housing Development Organization (CHDO) Certification. CHDO Certification Applications must meet the requirements of 10 TAC §53.90 at the time of Application submission.

(7) Review Process. All Applications will be reviewed in accordance with 10 TAC §53.22.

(8) Tie Breaker Factors. In the event that two or more Applications receive the same priority based upon the provisions of §(9) of this NOFA and are both practicable and economically feasible, the Department will utilize the factors in this section, in the order they are presented, to determine which Application will receive a preference in consideration for an awarded of funds.

(a) Applications involving any Rehabilitation or Reconstruction of existing units will win this first tier tie breaker over Applications involving solely New Construction.

(b) The Application with the least amount of HOME funds per unit will win this second tier tie breaker.

(9) Application Submission.

(a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on December 3, 2010. The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Chris Law at (512) 305-8854 or via e-mail at chris.law@tdhca.state.tx.us.

(b) Applicants must submit the Application materials as detailed in the Final ASPM in effect at the time the application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Final ASPM in effect at the time the application is submitted.

(c) The application consists of several parts as further described in the Final ASPM. A complete application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete applications or improperly compiled ap-

plications will not be accepted. Applicants must submit the application materials as detailed in the Final ASPM in effect at the time the application is submitted.

(d) Third party reports - If all applicable third party reports are not received at the time of application submission, the Application will be terminated.

(e) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

(f) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $300.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not a reimbursable cost under the HOME Program.

(g) Application Workshops. The Department will present several one-day HOME Program application workshops to provide an overview of the Single Family Development Program, application preparation and submission, evaluation criteria, and information about the major Federal and State requirements that would impact the development. The workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us/home-division/sf-home/index.htm.

(h) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attention: Chris Law

221 East 11th Street

Austin, Texas 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attention: Chris Law

Post Office Box 13941

Austin, Texas 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Single Family Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-201005350
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 14, 2010

♦ ♦ ♦

Hutchinson County

Request for Comments and Proposals: Additional Medicaid Beds

Notice to Solicit Comments on Whether a New Medicaid Nursing Facility Should Be Requested in Hutchinson County, and/or Proposals from Person or Entities Interested in Providing Additional Medicaid-Certified Beds in Hutchinson County

Department of Aging and Disability Services (DADS) rule 40 TAC §19.2322(h)(6) permits the County Commissioners Court of a rural county with a population of less than 100,000 and no more than two Medicaid-certified nursing facilities to request that DADS contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Hutchinson County Commissioners Court is considering requesting that DADS contract for additional Medicaid nursing facility beds in Hutchinson County. The Commissioners Court is soliciting public input and comments on whether the request should be made. Further, the Commissioners Court seeks proposals from persons interested in providing additional Medicaid beds in Hutchinson County to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid beds in Hutchinson County.

A public hearing to receive comments and proposals will be held in the October 11, 2010 meeting of the Hutchinson County Commissioners Court at the Hutchinson County Courtroom, located in the Hutchinson County Courthouse in Stinnett, Texas at 9:00 a.m.

TRD-2010005385
Faye Blanks
Hutchinson County Judge
Hutchinson County
Filed: September 16, 2010

♦ ♦ ♦

Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of HEALTHCARE STRATEGIES, INC. (DOING BUSINESS AS PARADIGM ADMINISTRATORS), a foreign third party administrator. The home office is PLYMOUTH MEETING, PENNSYLVANIA.

Application of TRANSWESTERN INSURANCE ADMINISTRATORS, INC. a foreign third party administrator. The home office is FRESNO, CALIFORNIA.

Application of PHARMACEUTICAL TECHNOLOGIES, INC. (DOING BUSINESS AS NATIONAL PHARMACEUTICAL SERVICES; DOING BUSINESS AS INTEGRATED HMO PHARMACY), a foreign third party administrator. The home office is OMAHA, NEBRASKA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register,* addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-201005361

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 14, 2010

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1318 "Instant Powerball®"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1318 is "INSTANT POWERBALL®." The play style is "key number match with multipliers."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1318 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1318.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 1X SYMBOL, 2X SYMBOL, 3X SYMBOL, 4X SYMBOL, 5X SYMBOL, $5.00, $10.00, $20.00, $25.00, $50.00, $100, $500, $1,000, $5,000, $100,000 and TICKET.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1318 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX

47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FTON
52	FTTO
53	FTTH
54	FTFR
55	FTFV
56	FTSX
57	FTSV
58	FTET
59	FTNI
1X	WINX1
2X	WINX2
3X	WINX3
4X	WINX4
5X	WINX5
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$5,000	FIV THOU
$100,000	HUN THOU
TICKET	$5-QP

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $5.00 Powerball, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $150, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1318), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1318-0000001-001.

K. Pack - A pack of "INSTANT POWERBALL®" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "INSTANT POWERBALL®" Instant Game No. 1318 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "INSTANT POWERBALL®" Instant

Game is determined once the latex on the ticket is scratched off to expose 47 (forty-seven) Play Symbols. The player must scratch the POWER PLAY spot to reveal the POWER PLAY play symbol. The player multiplies the total winnings on this ticket by the number shown and wins that amount. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If the player matches the POWERBALL NUMBER play symbols to any of YOUR NUMBERS play symbols, the player wins $25 instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 47 (forty-seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 47 (forty-seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 47 (forty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 47 (forty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than four (4) matching non-winning prize symbols will appear on a ticket.

C. The "2X" (win x 2), "3X" (win x 3), "4X" (win x 4) and "5X" (win x 5) POWER PLAY play symbols will appear on winning tickets only as dictated by the prize structure.

D. The "1X" (win x 1) POWER PLAY play symbol will always appear on winning tickets that do not utilize the "2X" (win x 2), "3X" (win x 3), "4X" (win x 4) and "5X" (win x 5) POWER PLAY play symbols.

E. No duplicate WINNING NUMBERS play symbols on a ticket.

F. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

G. The POWERBALL NUMBER play symbol will never match a WINNING NUMBERS play symbol.

H. One YOUR NUMBERS play symbol will match the POWERBALL NUMBER (win $25) play symbol only as dictated by the prize structure.

I. When one YOUR NUMBERS play symbol matches the POWERBALL NUMBER (win $25) play symbol, it will always have the $25 corresponding prize symbol.

J. Non-winning prize symbols will never be the same as the winning prize symbol(s).

K. No prize amount in a non-winning spot will correspond with the play symbol (i.e. 20 and $20).

L. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "INSTANT POWERBALL®" Instant Game prize of $5.00, $5.00 POWERBALL, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $150, $200 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if

appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $150, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "INSTANT POWERBALL®" Instant Game prize of $1,000, $5,000 or $100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "INSTANT POWERBALL®" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "INSTANT POWERBALL®" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "INSTANT POWERBALL®" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1318. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1318 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	320,000	18.75
$5 Powerball	800,000	7.50
$10	560,000	10.71
$15	80,000	75.00
$20	220,000	27.27
$25	117,000	51.28
$50	31,800	188.68
$100	7,000	857.14
$150	1,000	6,000.00
$200	2,550	2,352.94
$500	1,400	4,285.71
$1,000	300	20,000.00
$5,000	25	240,000.00
$100,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.80. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1318 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1318, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201005340
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 14, 2010

♦ ♦ ♦

Notice of Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §402.604 relating to Delinquent Purchaser will be held on Thursday, October 14, 2010, at 10:00 a.m. at 611 E. 6th Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, and Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-201005273
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 13, 2010

♦ ♦ ♦

Notice of Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §401.315 relating to "Mega Millions" On-Line Game Rule and §401.308 relating to "Cash Five" On-Line Game will be held on Thursday, October 14, 2010, at 2:00 p.m. at 611 E. 6th Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, and Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-201005280
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 13, 2010

♦ ♦ ♦

Notice of Texas Lottery Pick 3 On-Line Game Green Ball Promotion

The Texas Lottery Commission announces the following limited time player promotion to be conducted in accordance with the *Pick 3* on-line game rule.

The Green Ball promotion is a limited time player promotion associated with the *Pick 3* on-line game and is conducted in accordance with the *Pick 3* game rules and other lottery rules applicable to the *Pick 3* game. The Green Ball promotion will offer *Pick 3* players a chance to increase their *Pick 3* prize amounts won in a day or night *Pick 3* drawing during the promotion dates. This promotion applies to prizes for the *Pick 3* base game only and does not increase the prizes for the Sum It Up® add-on feature.

When a green ball is drawn, *Pick 3* prizes will be increased by approximately 20%. See prize chart included.

PICK 3 GREEN BALL PROMOTION DESCRIPTION

Promotion Dates: October 4 - October 30, 2010

The Green Ball promotion allows a player to increase their winning *Pick 3* prize amount by approximately 20%. The promotion does not increase the cost of the *Pick 3* play for the player.

From October 4 - October 30, 2010, there will be a total of forty-eight *Pick 3* drawings that will include an additional Green Ball drawing. At the start of this promotion, five (5) white balls and one (1) green ball will be placed in a drawing machine and one ball will be randomly selected after each *Pick 3* day and each *Pick 3* night drawing. If the green ball is selected, winning players will have approximately 20% added to their regular *Pick 3* prize amount. Every time a white ball is selected, the white ball is removed from the drawing machine. This increases the chances of the green ball being selected in the next drawing. Once the green ball is selected, all five white balls and one green ball are loaded back into the drawing machine for the next drawing. The odds of selecting the green ball range from 1:1 to 1:6 and depend on the total number of white balls in the drawing machine for a given drawing.

The *Pick 3* drawings and the Green Ball drawings will be available for viewing on the Texas Lottery website at www.txlottery.org.

Pick 3™ Green Ball™ Prize Chart

ODDS OF WINNING AND PRIZE AMOUNTS

(Note: Number combinations shown are for example only.)

IF YOU PLAY		FOR	AND NUMBERS DRAWN ARE	*PICK 3* PRIZE	GREEN BALL PRIZE	
EXACT ORDER: Odds 1:1,000	516	$.50 $1.00	516	$250 $500	$49 $98	$299 $598
ANY ORDER: 2 like numbers Odds 1:333	665	$.50 $1.00	665, 566, 656	$80 $160	$16 $32	$96 $192
ANY ORDER: 3 different numbers Odds 1:167	516	$.50 $1.00	615, 651, 516 561, 165, 156	$40 $80	$8 $16	$48 $96
EXACT/ANY ORDER: 2 like numbers Odds 1:333	797	$.50 Exact Order $.50 Any Order $1.00	797 Exact Order 797, 977, 779 Any Order	$250 + 80 = $330 Pays both Exact Order & Any Order when 797 is drawn $80	$66 $16	$396 $96
EXACT/ANY ORDER: 3 different numbers Odds 1:167	654	$.50 Exact Order $.50 Any Order $1.00	654 Exact Order 645, 654, 465 456, 564, 546 Any Order	$250 + 40 = $290 Pays both Exact Order & Any Order when 654 is drawn $40	$58 $8	$348 $48
COMBO: 2 like numbers Odds 1:333	242	$.50 + $.50 + $.50 = $1.50 $1 + $1 + $1 = $3.00 You're playing Exact Order 3 times for either $.50 or $1.00	242, 422, 224	$1.50 play wins $250 $3.00 play wins $500	$49 $98	$299 $598
COMBO: 3 different numbers Odds 1:167	358	$.50 + $.50 + $.50 + $.50 + $.50 + $.50 = $3.00 $1 + $1 + $1 + $1 + $1 + $1 = $6.00 You're playing Exact Order 6 times for either $.50 or $1.00	358, 385, 538 583, 835, 853	$3.00 play wins $250 $6.00 play wins $500	$49 $98	$299 $598

Pick 3 odds are 1:167-1,1,000. The Green Ball promotion applies to prizes for the *Pick 3* base game only and does not increase prizes for the *Sum It Up*™ add-on feature. The odds of selecting the green ball range from 1:1 to 1:6 and depend on the total number of white balls in the drawing machine for a given drawing. The Texas Lottery reserves the right to discontinue this promotion at any time. Must be 18 years of age or older to purchase a Texas Lottery ticket. The Texas Lottery supports Texas education. PLAY RESPONSIBLY.

TRD-201005379
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 15, 2010

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 10, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cequel III Communications I, LLC d/b/a Suddenlink Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 38655 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Prairie View, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38655.

TRD-201005352
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2010

♦ ♦ ♦

Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 3, 2010, for retail electric provider (REP) certification, pursuant to §39.352 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Infinite Electric, LLC Pursuant to Substantive Rule §25.107, Docket Number 38638 before the Public Utility Commission of Texas.

Applicant's requested service area is for the geographic area of the entire State of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. The deadline to intervene in this proceeding is September 24, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38638.

TRD-201005266
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2010

♦ ♦ ♦

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application for sale, transfer, or merger filed with the Public Utility Commission of Texas on September 8, 2010, pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated §§14.001, 14.101, 51.010, 52.002, and 54.051 - 54.054 (Vernon 2007 & Supplement 2009) (PURA).

Docket Style and Number: Joint Application of Hilliary Communications, LLC and Community Telephone Company for Approval of Sale, Transfer, or Merger, Docket Number 38647.

The Application: Hilliary Communications, LLC and Community Telephone Company (collectively, applicants) filed an application for approval of sale, transfer, or merger in which Hilliary Communications, LLC will purchase the majority interest in the single class of issued and outstanding stock of Community Telephone Company. Applicants seek to consummate this transaction on or before December 31, 2010. Applicants stated that this transaction will be transparent to existing customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing-and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 38647.

TRD-201005267
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2010

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (Commission) an application on September 8, 2010, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) transmission line in Briscoe, Crosby, Dickens, Floyd, and Motley Counties, Texas.

Docket Style and Number: Application of Sharyland Utilities, L.P. to Amend its Certificate of Convenience and Necessity for the Silverton to Cottonwood 345-kV CREZ Transmission Line in Briscoe, Crosby, Dickens, Floyd, and Motley Counties. SOAH Docket Number 473-11-0082; PUC Docket Number 38560.

The Application: Sharyland Utilities, L.P. (Sharyland) requests to amend its CCN for a proposed CREZ transmission line designated the Silverton to Cottonwood 345-kV Transmission Line Project (Project). The proposed Project consists of constructing a new double-circuit 345-kV transmission line, which will connect Sharyland's new Silverton Station located in southwest Briscoe County to Wind Energy Transmission Texas, LLC's new Cottonwood Station, located in northwest Dickens County.

The application includes a total of 17 alternative routes. Sharyland identified Alternative Route 17, as its preferred route. Any route presented in the application could, however, be approved by the Commission. The preferred route for the new 345-kV double-circuit line is approximately 61 miles in length and is proposed to be

constructed on double-circuit steel lattice structures. The estimated date to energize facilities is February 2013. The estimated cost of the Project is $146,240,000. Pursuant to the Public Utility Regulatory Act §39.203(e), the Commission must issue a final order in this docket before the 181st day after the date the application is filed with the Commission.

In Docket Number 33672, the Commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. The Silverton to Cottonwood (formerly known as Panhandle AC to Panhandle AD) double-circuit 345-kV CREZ transmission line project, the subject of this application, was specifically identified in that order as a necessary facility. In Docket Number 36802, Sharyland was ordered to complete the project identified as the Silverton to Cottonwood (formerly known as Panhandle AC to Panhandle AD) double-circuit CREZ Project.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is October 8, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-11-0082 and PUC Docket Number 38560.

TRD-201005353
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2010

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 8, 2010, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) transmission line in Wilbarger, Hardeman, Foard, Knox, Cottle, King, Motley, and Dickens Counties, Texas.

Docket Style and Number: Application of Electric Transmission Texas, LLC to Amend its Certificate of Convenience and Necessity for the Riley to Edith Clarke to Cottonwood 345-kV CREZ Transmission Line in Wilbarger, Hardeman, Foard, Knox, Cottle, King, Motley, and Dickens Counties. SOAH Docket Number 473-11-0071; PUC Docket Number 38562.

The Application: Electric Transmission Texas, LLC (ETT) requests to amend its CCN for a proposed CREZ transmission line designated the Riley to Edith Clarke to Cottonwood Double-Circuit 345-kV Transmission Line Project (project) (formerly identified as the "Panhandle AD - Oklaunion" combined application). The proposed project consists of constructing two separate segments of a new double-circuit 345-kV transmission line: (1) Riley to Edith Clark; (2) Edith Clark to Cottonwood. The proposed project is described in the ERCOT CREZ Transmission Optimization (ERCOT CTO) Study as the "Panhandle AD to Oklaunion" (combined application - Oklaunion-PanOakMid, Panhandle AD-PanOakMid). The preferred route for the new 345-kV double-circuit line is approximately 119 total miles in length and will be constructed on double-circuit steel single pole structures. The applicant's estimated cost of the project is $198,968,000.

The application includes alternative routes for each line and identifies ETT's preferred route as follows: (1) The Riley to Edith Clark segment will consist of a 43.2 mile line extending from ETT's new Riley Switching Station in central Wilbarger County to the proposed new ETT Edith Clarke Switching Station in central Foard County. The estimated date to energize facilities for this transmission line is March 2013. The Riley to Edith Clark segment has 14 routes with route REC-12 designated as the preferred route. However, any route presented could be approved by the commission; (2) The Edith Clark to Cottonwood segment is a proposed 75.8 mile line extending from ETT's new Edith Clark Switching Station to Wind Energy Transmission Texas' (WETT) proposed new Cottonwood Switching Station located in northern Dickens County. The estimated date to energize facilities for this transmission line is September 2013. The Edith Clark to Cottonwood segment includes a total of 23 alternative routes. ETT has identified ECC-2 as its preferred route. However, any route presented could be approved by the commission.

Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

In Docket Number 33672, the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. The Riley to Edith Clark to Cottonwood 345-kV transmission-line project, the subject of this application, was specifically identified in that order as necessary facilities. In Docket Number 36802, ETT was ordered to complete the project identified as the Riley to Edith Clarke to Cottonwood Double-Circuit 345-kV Transmission Line Project (project) (formerly identified as the "Panhandle AD - Oklaunion" combined application) double-circuit CREZ project.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is October 8, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-11-0071 and PUC Docket Number 38562.

TRD-201005269
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2010

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 8, 2010, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) transmission line in Collin, Cooke, Denton and Grayson Counties, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend its Certificate of Convenience and Necessity for the Krum West to Anna 345-kV CREZ Transmission Line in Collin, Cooke, Denton and Grayson Counties. SOAH Docket Number 473-11-0072; PUC Docket Number 38597.

The Application: Oncor Electric Delivery Company LLC (Oncor) requests to amend its CCN for a proposed CREZ transmission line des-

ignated the Krum West to Anna 345-kV Transmission Line Project (project). The proposed project consists of constructing a new double-circuit 345-kV transmission line, which will connect Oncor's new Krum West Switching Station, located in Denton County to the existing Anna Switching Station, located in Collin County.

The application includes a total of 96 alternative routes. Oncor identified Alternative Route 2288, as its preferred route. Any route presented in the application could, however, be approved by the commission. The preferred route for the new 345-kV double-circuit line is approximately 51 miles in length and is proposed to be constructed on double-circuit steel monopole structures. The estimated date to energize facilities is December 2013. The estimated cost of the project is $133,963,000. Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

In Docket Number 33672, the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. The Krum West to Anna (formerly known as West Krum to Anna) double-circuit 345-kV CREZ transmission line project, the subject of this application, was specifically identified in that order as a necessary facility. In Docket Number 36802, Oncor was ordered to complete the project identified as the Krum West to Anna (formerly known as West Krum to Anna) double-circuit CREZ Project.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is October 8, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-11-0072 and PUC Docket Number 38597.

TRD-201005268
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2010

♦ ♦ ♦

Notice of Petition for Restoration of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 9, 2010, for restoration of Universal Service Funding pursuant to Public Utility Regulatory Act, §56.025 and P.U.C. Substantive Rule §26.406.

Docket Style and Number: Petition of Poka Lambro Telephone Cooperative, Inc. Pursuant to Public Utility Regulatory Act, §56.025 and P.U.C. Substantive Rule §26.406. Docket Number 38652.

The Application: The petition requests that the Public Utility Commission of Texas (commission) restore approximately $635,000 to Poka Lambro Telephone Cooperative, Inc. (Poka Lambro) that it did not receive from the Texas Universal Service Fund (TUSF) in 2010. Poka Lambro stated that the replacement amount is the difference between Poka Lambro's projected annual draw from the TUSF as compared to its annual draw as of February 10, 1998. Poka Lambro contends that the commission's implementation of P.U.C. Substantive Rule §26.404(e) has negatively impacted Poka Lambro's distribution from TUSF and lowered its revenues below a level necessary to meet its requirements to provide universal service. In addition, Poka Lambro requests the commission establish a mechanism for annual review of the company's amount and access lines for annual adjustments.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-477. The deadline for intervention in this proceeding is currently October 25, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 38652.

TRD-201005371
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2010

♦ ♦ ♦

Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Architectural/Engineering Services

Gray County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: Gray County. TxDOT CSJ No. 10TBPAMPA. Scope: Provide engineering/architectural services to design and construct new terminal building.

The HUB goal is set at 9%. TxDOT Project Manager is Stephanie Kleiber, P.E.

To assist in your proposal preparation the criteria, 5010 drawing, and most recent airport layout plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Perry Lefors Field."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, telephone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT web site as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor,

South Tower, Austin, Texas 78704 no later than October 19, 2010, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey.

The consultant selection committee will be composed of Aviation Division staff members and one local government member. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of architectural/engineering proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Kelle Chancey at 1-800-68-PILOT at extension 4514. For technical questions, please contact Stephanie Kleiber, at 1-800-68-PILOT at extension 4524.

TRD-201005344
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 14, 2010

♦ ♦ ♦

West Central Texas Council of Governments

Request for Proposals for Environmental Assessment and Planning Services

Overview: The U.S. Environmental Protection Agency (USEPA) has awarded the West Central Texas Council of Governments (WCTCOG) a $200,000 Brownfields Hazardous Substances Assessment Grant. Grant funds will be used to conduct community involvement activities, perform Phase I and Phase II Environmental Site Assessments (ESA), formulate cleanup plans, and develop a Remedial Reuse Strategy for sites in the WCTCOG's region.

WCTCOG is currently seeking proposal from highly-qualified and experienced environmental consultants to perform environmental assessment and remedial planning activities, to facilitate community outreach events, and to assist with project management and grant administration of the USEPA grant. The proposals to be submitted must satisfy all of the required work elements in this request for proposal (RFP) for the WCTCOG Brownfield Redevelopment Project.

The WCTCOG Brownfield Redevelopment program involves the coordination of environmental and economic development initiatives, as well as extensive partnering with community groups, the financial and business communities, real estate professionals, developers, lenders, and state and local economic and environmental agencies.

WCTCOG is looking to contract with a minimum of two contractors on an as needed basis, if needed basis for assistance in administering the WCTCOG's Brownfield Redevelopment Project.

INTRODUCTION

WCTCOG is seeking the services of a qualified consultant(s) for the purpose of conducting Environmental Assessments of parcels within their Region. The purposes of conducting the studies are to:

Determine if any environmental contamination is present in the study area. Determine what, if any, cleanup planning is required to prepare the property for the reuse. The general scope of work for the consultant(s) to perform is included below.

SUMMARY OF PROJECT DESCRIPTION AND DELIVERABLES

The scope of services to be provided by the environmental consultant(s) is assumed to include:

General Assessment--A general background study will be performed to provide information necessary for the Phase I assessments, allow the WCTCOG to rank and score sites as to the need for additional work under this grant, and identify environmental concerns in the area that may be a hindrance to future development. The background study will cover all properties identified in the target area.

In order to provide useful information for the Phase I assessments, the general assessment will complete the Records Review portion of the Phase I assessments in accordance with current "American Society Testing and Materials" (ASTM) procedures for the identified properties and for the surrounding area. It is important that the work be completed in accordance with current EPA-approved ASTM procedures so that it can be directly used in Phase I assessments.

Community Outreach--Community notification and outreach have been and will continue to be critical to the success of the project for the immediate neighborhoods and broader communities in the WCTCOG Region. A series of public meetings will be conducted to keep the public informed of the various components of Plan Implementation, consultant should anticipate a minimum of two public outreach events, which will include presentations (in layman's terms) on assessments sampling plans, methods and results, cleanup options and recommendations. Consultant support for public outreach events will require preparation of display boards, fact sheets and other necessary informational handouts.

Property Identification/Ranking--List of properties selected and prioritized for Phase I Environmental Assessment.

Property Assessments--Based on the types of potential contaminants identified from readily available historical information regarding the study area, the WCTCOG anticipated Phase I assessments will be necessary on many of the properties, some may warrant Phase II assessments, and potentially subsequent Phase III cleanup plans. Phase I Assessments will be conducted in accordance with the current EPA and ASTM Standards as well as applicable requirements of the State. Phase II Assessments will be tailored to each identified site. They will also be conducted in compliance with ASTM Standards, as well as applicable requirements of the USEPA and State. Cleanup plans, when applicable, should include options and preliminary cost estimates.

Quality Assurance Project Plans--The USEPA requires that all federally-funded environmental monitoring, sampling and measurement efforts participate in a centrally managed quality assurance program. Anyone generating data under this quality assurance program has the responsibility to implement procedures to ensure that the precision, accuracy, and completeness of its data are known and documented. To meet this responsibility, USEPA requires that for each Brownfields site, a written Quality Assurance Project Plan (QAPP) be prepared and submitted to and approved by USEPA prior to the commencement of sampling.

A QAPP and/or Field Sampling Plans from the selected contractor must be performed and approved by the WCTCOG and the USEPA prior to any Phase II onsite field work.

The WCTCOG will review all environmental assessment proposals. QAPP's and subsequent work plans to determine if activities will meet the objectives of the Brownfields project before the start of the assessment activities.

The QAPP should describe the measure that will be used to ensure that defensible and quality data are collected and reported for this project. QAPP's must describe and provide a rationale for selecting locations, types, quantities and analyses for proposed samples. QAPP's should

also include general equipment and methods for proposed sampling and analyses with reference to specific Federal, State and professional practice guidelines. Proposed analysis and measurement methods must be capable of reliably detecting concentrations equal to or below applicable cleanup standards for future land use.

Cleanup Planning--Analysis of cleanup options will be based on cleanup goals, methods and costs considered acceptable by the WCTCOG, the community and/or State/Federal regulators. Specific following: risk to public health, safety and environment (during and after redevelopment); implement-ability; effectiveness; applicability with Federal, State and local laws/regulations; degree of permanency; time; and cost.

MBE/WBE Utilization Requirements--In accordance with USEPA's program for utilization of Small (SBE), Minority (MBE) and Women's Business Enterprises (WBE), the contractor must ensure that opportunities are extended to qualified MBE/WBE firms (see 40 CFR §35.6580(a)).

The overall goal of the WCTCOG's Brownfields Redevelopment Project is:

--To create developable land within the WCTCOG's region for business expansion and public uses.

--To eliminate blight.

--To revitalize the Region by transitioning the area from post-industrial, agricultural, and/or vacant land to a vibrant mixed-use district.

--To improve the health and safety of the adjacent residential neighborhoods.

MINIMUM QUALIFICATIONS FOR CONSULTING FIRMS

The consulting firms submitting proposals to the WCTCOG shall address the following minimum qualifications in its proposals:

Experience in brownfields assessment and planning (to include references) Extensive experience in environmental assessment. Experienced consultants will have previously worked on a USEPA Brownfield Assessment project, developed a USEPA Quality Assurance Project Plan (QAPP), and have experience working in Texas.

Successful history of being a "team player" on multi-faceted development projects including working with other consultants, non-profit organizations, private developers, public officials, and the general public.

PROPOSAL SPECIFICS

In addition to the minimum qualifications information, all proposals submitted shall include the following information:

Company profile and experience;

Fee schedule;

Resume(s) of qualified personnel; and

Project examples

ADDITIONAL REQUIREMENTS FOR APPLICATIONS PER USEPA

Per the directives of the USEPA, all applicants shall provide evidence of their fulfillment of or commitment to the following:

Use of recycled paper for all reports and documents to be submitted to USEPA; and

Ensure that best efforts are made to achieve "Fair Share" goals for WBE/MBE in selection of any subcontractors.

Firms shall submit two (2) bound copies of their proposals to:

Ms. Wendy Patterson

Regional Services Director

West Central Texas Council of Governments

3702 Loop 322

Abilene, Texas 79602

wpatterson@wctcog.org

Submittal deadline is September 28, 2010 by 10:00 a.m.

Proposals must be submitted in a sealed envelope. The Request for Proposal number and the consultant's name and address should be clearly indicated on the outside of the envelope. All proposals must be typewritten. Questions must be addressed to the Officer listed above.

Respondents shall be evaluated on the completeness of their applications, as well as their experience, content and cost considerations. The WCTCOG reserves the right to reject any and all bids based upon their evaluation of all of these considerations.

Notwithstanding any other provision of the Request for Proposal, the WCTCOG reserves the right to: Waive any immaterial defect or informality; or reject any or all proposals or portions thereof; or reissue the Request for Proposal.

LATE PROPOSALS: Late proposals shall not be considered.

TRD-201005250
Tom Smith
Executive Director
West Central Texas Council of Governments
Filed: September 9, 2010

♦ ♦ ♦

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 35 (2010) is cited as follows: 35 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "35 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 35 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*